

MAINE STATE LEGISLATURE

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New Draft of: S. P. 424, L. D. 1246
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1651

S. P. 636

In Senate, May 22, 1981

Reported by Senator Devoe of Penobscot from the Committee on Public Utilities and Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Authorize a Water District for the Town of Milbridge in Washington County.

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

Sec. 1. Territorial limits; name; purposes. The territory comprising the Town of Milbridge and the inhabitants of the town are hereby created a body politic and corporate under the name of "Milbridge Water District" for the purposes of supplying inhabitants and others in the district with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes. All incidental rights, power and privileges, necessary to the accomplishment of the main objects herein set forth are hereby granted to the Milbridge Water District.

Sec. 2. Powers. The district for the purposes of its incorporation is hereby authorized to take, hold, divert, use and distribute water from any river, lake, pond, stream, brook, spring, well or other source, natural or artificial, in the district.

Sec. 3. Eminent domain. The district, for the purposes of its incorporation, is hereby authorized to take and hold within the area covered by the district as for public uses, real estate and personal estate and any interest therein necessary for those purposes, by purchase, lease or otherwise, and is hereby authorized to exercise the right of eminent domain as hereinafter provided, to acquire for those purposes any land or interest therein or water rights necessary for erecting and

maintaining dams, plants and works, for flowage, for pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts and other structures for taking, distributing, discharging and disposing of water, for forming basins and reservoirs, for erection of buildings for pumping works for use therein, for laying pipes and maintaining same and for laying and maintaining conduits for carrying, collecting and discharging water, for filtering, rectifying and treating plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation and for rights-of-way or roadways to its sources of supply, dams, reservoirs, mains, aqueducts, structures, plants, works facilities and lands.

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

Nothing herein contained shall be construed as authorizing the water 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 therein, or by subsequent Act of the Legislature.

Sec. 4. Procedure in exercising right of eminent domain; assessment of damage; appeal procedure. In exercising any rights of eminent domain that are herein conferred upon the district, the district shall file for record in the registry of deeds in Washington County 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 that location, or if the location as recorded is defective or uncertain, it may, at any time correct and perfect that location and file a new description thereof and in that 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 may be made on any private lands except to make surveys until the expiration of 10 days from the filing, whereupon possession may be had of all the lands or interest therein so taken, but title thereto shall not vest in the district until paid for.

If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of the district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Washington County, may have the

damages assessed by them. The procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

Sec. 5. Procedure if public utility must be crossed. In case of any crossing of the public utility, unless consent is given by the company owning or operating the public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by the district, the Public Utilities Commission upon petition by the district shall determine the place, manner and conditions of the crossing; and all work on the property of the public utility shall be done under the supervision and the satisfaction of the public utility or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 6. Trustees; how appointed; meetings; officers. All of the affairs of the district shall be managed by a board of 3 trustees who shall be chosen as hereinafter provided. During his term of office no selectman of Milbridge shall serve as a trustee.

As soon as may be after the acceptance of this Act as hereinafter provided, the municipal officers of Milbridge shall appoint 3 trustees of the district to hold office as follows: One to serve until the first annual election of municipal officers following the acceptance of this Act; one to serve until the 2nd annual election of municipal officers following the acceptance; and one to serve until the 3rd annual election of municipal officers following such acceptance. At each annual election of municipal officers, beginning with the first annual election of municipal officers after the acceptance of this Act, as their terms expire, a trustee shall be elected by ballot to serve until the annual election of municipal officers occurring 3 years thereafter and until his successor is appointed or elected and qualified. Election of trustees shall be conducted in accordance with the procedures for and at the same time as election of the municipal officers of Milbridge. Whenever any trustee who was appointed as a resident of the district ceases to be a resident of the district, he vacates the office of trustee. All trustees shall be eligible for reelection. Vacancies in the office of trustee shall be filled by appointment of the municipal officers of the town of Milbridge until the next annual election. If at any annual election there shall exist a vacancy in an unexpired term, the voters of the district shall cast their ballot for as many candidates as there are offices to be filled.

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 by hand to the other 2 members, not less than 2 full days before the meeting. They may meet by agreement without the notice. They shall then organize by electing from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer, whose salary shall be fixed by the trustees, to serve until the next annual meeting of the district and until their respective 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. Members of the board of trustees shall be eligible to any office under the board. The trustee shall receive compensation as recommended by them and approved by the town of Milbridge, 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 specific amount as may be specified in the bylaws, per meeting actually attended and reimbursement for travel and expenses, with the total amount as may be specified in the bylaws.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member who shall serve 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 Annual Town Report of the Town of Milbridge.

Sec. 7. Annual meeting of district. After the acceptance of this charter and the organization of the board, the annual meeting of the district for choice of a trustee shall be held on such date and at such hour and place as may be designated by resolution of the board of trustees as provided in the bylaws, and the municipal officers shall then appoint the trustee then required.

Sec. 8. District and town authorized to make contracts. The district, through its trustees, is authorized to contract with persons and corporations, including municipalities, and municipalities are authorized to contract with it, for the supply of water for municipal purposes.

Sec. 9. Authorized to acquire certain property of Milbridge Water Company. The district, through its trustees, is hereby authorized to acquire by purchase all or part of the entire plant, properties, franchises, rights and privileges owned by Milbridge 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 district; and the company is hereby authorized to sell, transfer and convey its plants, properties, franchises, rights and privileges to the district.

Sec. 10. Procedure in case trustees and Milbridge Water Company fail to agree on terms of purchase. In case the trustees fail to agree with the Milbridge Water Company upon terms of purchase, then the water district, through its trustees aforesaid, is hereby authorized to take the properties, interest and franchises of the Milbridge Water Company as set forth in section 9, in the manner hereinafter provided wherein the Milbridge Water Company and its mortgages, if any, or those having an interest in any realty which is of record, shall be the parties defendant. The water district, through its trustees, is hereby authorized to file a petition in the clerk's office of the Superior Court for the County of

Washington, addressed to any justice thereof who, after notice to the defendant aforesaid, shall, after hearing and within 60 days after the filing of the petition, appoint 3 disinterested appraisers for the purpose of fixing the valuations of the plant, property and franchises of the Milbridge Water Company described in section 9. The court may order under proper terms the production for inspection by the trustees of the said appraisers of all books and papers pertaining to the issue on petition for same by the petitioner, unless same are voluntarily produced. The appraisers shall have the power to administer oaths. The appraisers so appointed shall, after due notice and hearing, fix the valuation as of the date of filing the petition of the plants, properties and franchises at what they were fairly and equitably worth so that the water company shall receive just compensation for same. The report of the appraisers or a majority of them, together with the report of a stenographer certified by the appraisers as correct, shall be filed in the clerk's office within 6 months after their appointment 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 the 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 the decree as in equity cases. All findings of fact by the 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. The exceptions shall be claimed on the docket within 10 days after the final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties and the exceptions so claimed shall be made up, allowed and filed within the time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the Law Court to be held after the filing of the 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 the district of the amount determined by the final decree and the performance of all other terms and conditions imposed by the court, the plant, properties and franchises of Milbridge Water Company as described in section 9 shall become vested in the Milbridge Water District.

Sec. 11. Authorized to borrow money, to issue bonds and notes. For accomplishing the purposes of this Act, and for such other expenses as may be necessary for the carrying out of the purposes, the district, through its trustees, 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, of paying any necessary expenses and liabilities incurred under the provisions of this Act, including organizational and other necessary expenses and liabilities whether incurred by the district or the Town of Milbridge, the district being authorized to reimburse the town for any such expenses incurred by them, and in acquiring properties, paying damages, laying pipes, mains, aqueducts and conduits, constructing, maintaining, and operating a water plant or system and making renewals, additions, extensions and improvements to the same, and to

cover interest payments during the period of construction, the district, through its trustees, 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.

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 none of them shall run for a longer period than 40 years from the date of original issue thereof. Bonds, notes or evidences of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Milbridge Water District," shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile signature of the treasurer.

The total indebtedness of the district outstanding at any one time issued for capital outlay purposes may not exceed such sum which has been determined by the voters of the district, not including indebtedness in anticipation of or matching government grants or loans or to carry out projects specifically mandated by the State or Federal government.

In the event that the trustees vote to authorize bonds or notes, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more adjusted, however, relative to 1981 as the base year according to the annual consumer price index, as published by the appropriate federal agency, the trustees shall provide notice to the general public of the proposed bond or note issued and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district. The trustees shall also give notice to each ratepayer by mail. No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized. Except for indebtedness to fund projects specifically mandated by the State and Federal government, for debts in excess of the amount specified in this paragraph, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater, filed with the clerk of the district on or before the date of the meeting, the meeting shall also express approval or disapproval of the amount of debt so authorized. If a majority of voters present and voting expresses disapproval of the amount of debt authorized by the trustees the debt shall not be incurred and the vote of the trustees authorizing it shall be void and of no effect.

All bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is hereby declared to be a quasi-municipal

corporation within the meaning of the Revised Statutes, Title 30, section 5053, and all provisions of that section shall be applicable thereto. The district may refund and reissue, from time to time, in one or in separate series, its bonds, notes and other evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by that district shall be legal investments for savings banks in the State and shall be tax exempt.

Sec. 12. Property tax exempt. The property, both real and personal, rights and franchises of the district shall be forever exempt from taxation.

Sec. 13. Water rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of the district the rates established by the board of trustees for the water used by them. The rates shall be uniform within the territory supplied by the district and shall be subject to the approval of the Public Utilities Commission. The rates shall be so established as to provide revenue for the following purposes:

1. To pay current expenses for operating and maintaining the water system and to provide for such extensions and renewals as may become necessary;
2. To provide for the payment of the interest on the indebtedness created by the district;
3. To provide each year a sum equal to not less than 2% nor more than 10% of the entire indebtedness created by the district other than serial bonds and notes, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of that indebtedness. If serial bonds or notes are issued, rates shall be established to pay the principal of such bonds and notes payable in such year. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks or fiduciaries or trustees in this State are now or hereafter allowed to hold;
4. If any surplus remains at the end of the year, it may be turned into the sinking fund or used for such other purposes of the district as the trustees may determine.

Sec. 14. Existing statutes not affected; rights conferred subject to provisions of law. Nothing therein 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, except those referred to in section 10, shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes, Title 35, and all Acts amendatory or additional thereto.

Sec. 15. Referendum; effective date. 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. The elections shall be called by the municipal officers of the Town of Milbridge and shall be held at the regular voting places; the date of the election shall be

determined by the municipal officers, but the first such meeting of the town shall not be later than the first day of November, 1981. The special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registrations shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose the board of registration shall be in session on the 3 secular days next preceding the election, 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 the lists and to complete and close up its records of the session. The town clerk shall reduce the subject matter of this Act to the following question:

“Shall the Act to authorize a water district for the Town of Milbridge in Washington County 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 the district voting at the election, but only if the total number of votes cast for and against the acceptance of this Act in the special election equals or exceeds 20% of the total number of names on the check list of voters of the district provided herein, which check list shall be used at the election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

The results of the elections shall be declared by the municipal officers of the Town of Milbridge and due certificates thereof filed by the town clerk with the Secretary of State.

STATEMENT OF FACT

This new draft requires elected trustees, modifies the debt limit and increases the sinking fund allowance from a range of 1-5% to a range of 2-10%, while retaining the purpose of the original bill, to authorize the formation of a water district for the Town of Milbridge.