

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 1067

H. P. 770

House of Representatives, January 31, 1961

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Davis of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT to Incorporate the Calais Water District.

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

Sec. 1. Territorial limits; name; purposes. The territory and people comprising the City of Calais shall constitute and are hereby created a body politic and corporate under the name of "Calais Water District" for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, commercial and municipal purposes.

Sec. 2. Source of supply. The said district, for the purposes of its incorporation, is hereby authorized to take, collect, store, flow, use, detain, distribute and convey water purchased from any other source, foreign or domestic and to take, hold, divert, use and distribute water from the St. Croix River or any other source of supply within said district as is approved by the Public Utilities Commission, or to contract to do all or any of the foregoing.

Sec. 3. Power of eminent domain; construction of facilities. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as and for public uses, by purchase, lease, or otherwise, including the right of eminent domain, which right is hereby expressly delegated to said district for said purposes, any real estate or interests therein or water rights necessary for erecting and maintaining a central water supply system, for erecting and maintaining dams, for flowage, for plants and works, for laying and maintaining mains, aqueducts, and other structures, for pumping, for supplying water through its mains, for preserving the purity of the water and watershed, for taking, distributing, discharging and disposing of water, and for rights of way or roadways to its sources of supply, dams, reservoirs, mains, aqueducts,

structures and lands, and without being limited by the foregoing, for such other purposes as may be necessary, convenient and proper for the purposes of the corporation. 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, municipal corporation, quasi-municipal 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.

The said district is hereby authorized to lay in and through such streets, roads, ways and highways, and across such private lands as may be necessary and convenient for the purposes of the district hereby created, and to use, maintain, repair and replace all such pipes, aqueducts, mains, conduits and fixtures as may be necessary or convenient for its corporate purposes and whenever said district shall lay any pipes or aqueducts 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 replaced in as good condition as near as may be as prior to the removal.

The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and, without being limited by the foregoing, structures necessary and convenient for its corporate purposes.

Sec. 4. Eminent domain and adjustment of damages. The said district in exercising, from time to time, any right of eminent domain conferred upon it by law shall file written application with the Public Utilities Commission requesting its approval of the proposed taking. Such application shall describe the property or rights to be taken, the purpose of the taking, and shall name all parties who may be interested therein; the Commission thereupon shall appoint a time for a hearing near the premises, and shall require such notice as the Commission may direct to be given to the persons interested at least 14 days before the date of the hearing; the Commission then shall view the premises, hear the parties, and shall determine how much, if any, of the property described in the petition should be taken for the reasonable purposes of the district and for the sale, economical and efficient furnishing of an adequate water supply; and in authorizing any taking the Commission may attach such reasonable terms, limitations and restrictions as justice may require. If the Commission shall find that any of the property described in the application is necessary for the aforesaid purposes of the district, it shall make a certificate containing a definite description of the property to be taken, and of any terms, restrictions and limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the Clerk of the Commission; and when such copy of the certificate is filed with the clerk of courts in the county where the property lies, the property shall be deemed and treated as taken. Entry may be made on any private lands prior to the filing of any such application for the purpose of making surveys, the district being liable for any damage resulting from such entry. Possession by the district may be had of the property described in the certificate of the Commission forthwith upon the filing of such certificate as hereinbefore

provided, but title to such property shall not vest in the district until payment therefor has been made or tendered.

If any person sustaining damages by any taking as aforesaid shall not agree with the district upon the sum to be paid therefor, either party, upon petition to the county commissioners of the county in which such property lies, may have such damage assessed by them. The procedure and all subsequent proceedings and right of appeal therefrom 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. Procedure if public utility is crossed. In case of any crossing of the property of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the Public Utilities Commission, if it finds that a reasonable necessity exists for such crossing, shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the reasonable satisfaction of such public utility, but at the expense of the district.

Sec. 6. Board of trustees, how elected; meetings; vacancies, how filled. All the affairs of said district shall be determined and managed by a board of 3 trustees, who shall be residents of said district, appointed by the city council of the city of Calais and shall hold office as hereinafter provided and until their respective successors are appointed and qualified. Whenever the term of office of a trustee expires, the city council of said Calais shall appoint a successor to serve the full term of 3 years and any other vacancy arising from any cause shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of said district, his office as trustee shall be declared vacant. No member of the Calais city council shall serve as a member of the board of trustees of the district and the compensation of the trustees shall be \$150 each per year.

The first board of trustees shall be appointed within 30 days after acceptance of this act by the voters of said district, one to serve until the first Monday in May next following the acceptance of this act, one to serve until the 2nd such first Monday in May next following acceptance of this act and one to serve until the 3rd such first Monday in May next following acceptance of this act. Thereafter, members shall be appointed to serve for a term of 3 years. As soon as convenient after their appointment the trustees first appointed 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 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement and waiver without such notice. They shall then organize by the election of a chairman and clerk from their own number, adopt a corporate seal and by-laws, and perform any other acts within the powers delegated to them by law. As necessary, they may choose agents and other needful officers who shall serve at their pleasure, and whose compensation shall be fixed by said trustees. They shall choose annually a

treasurer to serve for a term of one year, fix the treasurer's salary and fill vacancies in that office. The treasurer shall furnish a bond executed in such sum by a surety company as trustees may approve, and the expense of securing the bond is to be borne by the district.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk pro tempore. They shall make and publish an annual report which shall also contain a report of the treasurer.

Sec. 7. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks. For accomplishing the purposes of this act, said district, through its trustees, is authorized, with the approval of the Public Utilities Commission, to borrow money from time to time, and to issue therefor the interest-bearing negotiable notes of the district, maturing serially or otherwise and to make subsequent renewals of the same in whole or in part, and for said purposes and for the purpose of refunding any notes, bonds or other lawful indebtedness to establish a fund therefor. For the purpose of obtaining or providing money to pay or to meet any necessary expenses and liabilities under the provisions of this act, including construction expenses in securing sources of supply, taking water and land, paying damages, laying pipes, and making major extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor, maturing and payable at such time or times, in uniform or varying installments, with or without such call provisions, and with or without such a premium or premiums, as said trustees shall determine. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1954, chapter 53, section 137 and chapter 90-A, section 23, as enacted by public laws of 1957, chapter 405, section 1. The said notes and bonds shall be legal investments for savings banks.

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

Sec. 8. Property tax exempt. The property of said district, wherever located, shall be exempt from taxation.

Sec. 9. Water rates; application of revenue; sinking fund. Water rates shall be uniform for all classes of consumers within the district and shall be subject to approval of the Public Utilities Commission. Said rates shall be so established as to provide revenue for the following purposes:

I. To pay current expenses for operating and maintaining the water system, and provide for such extensions and renewals as may become necessary;

II. To provide for the payment of the 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. 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 are allowed to hold. Provided, however, that the trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year;

IV. If any surplus remains at the end of the calendar year, it may be transferred to the sinking fund, or used for such other purposes of the district as the trustees may determine upon.

Sec. 10. Incidental rights and privileges. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the district hereby created.

Sec. 11. District and city authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations, foreign and/or domestic, including the City of Calais, which city is authorized to contract with it for the supply of water for municipal purposes. Said district is further authorized to contract for the purchase of water from the appropriate agency controlling the present source of waer in St. Stephen, New Brunswick, new used by the Calais Water & Power Company and to contract for the sale and delivery of water to persons and corporations in Milltown, New Brunswick.

Sec. 12. Authorized to acquire property and franchises of the Calais Water & Power Co. Said water district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Calais Water & Power Company, including all lands, waters, water rights, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water by said Calais Water & Power Company. Said company is hereby authorized to transfer and convey its franchises and property to said water district.

Sec. 13. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Calais Water & Power Company upon the terms of purchase of the above mentioned property, on or before July 1, 1962, said district, through its trustees, is hereby authorized to take said plant, property and franchises as for public use by petition therefor in the manner hereinafter provided. Said district, through its trustees, is hereby authorized on or before July 1, 1962, to file a petition in the clerk's office of the Superior Court for the County of Washington, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Calais Water & Power Company and its mortgagee, shall, after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law and none of whom shall be residents of Washington County, for the purpose of fixing a valuation of said plants, properties and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspec-

tion of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be endorsed from time to time as any Justice of the Superior Court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice, upon motion of the petitioner, may fix a time at which said water company shall file in the clerk's office of the Superior Court for the County of Washington for the inspection of the petitioner, so far as they relate to the service of the City of Calais, the following: First, schedule showing the names, residences and water service of all its customers on the first day of January, next preceding the date of filing the petition, with the rate charged therefor; 2nd, copies of all contracts in force on said first day of January; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of January, and all operating expenses and fixed charges, paid or incurred during such period and property chargeable thereto; 4th, a memorandum of all real estate, water rights or interest therein, owned or controlled on said first day of January, with such brief description thereof as will reasonably identify the same; 5th, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, shut-off boxes, fixtures and machinery and all the physical elements in such water system, giving in detail, quantities, sizes, and lengths, and specifying the streets, roads or ways where situated; and 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of January.

Such orders may be enforced from time to time by any Justice of said Superior Court, in term time or in vacation, upon motion of any of the parties, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner through its servants and employees, to ascertain the true condition of the mains and pipes of the said water company, externally or internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by said water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths. Any witness or person in charge of such books, accounts and papers, refusing to attend or to produce the same, shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the Superior Court. Depositions may be taken as in civil actions.

The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive just compensation for all and the same. The said first day of January, next preceding the date of the filing of the petition, shall be the date at which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or a

majority of them, shall be filed in the clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the Chief Justice of the Supreme Judicial Court, may, after notice and hearing, confirm or reject the same, or recommit it if justice so requires. Before a commission is issued to said appraisers, either party may ask for instructions to said appraisers, and all questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the Law Court for determination, before the appraisers proceed to fix the valuation of the property, plant and franchise of said company.

Upon the confirmation of said report, the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of 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 shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, 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 to the parties or their counsel, 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 the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall allow further time for hearing thereon. Before said plants, properties or franchises are transferred in accordance with such final decree, and before payment therefor as hereinafter provided, such justice shall, upon motion of either party after notice and hearing, take account of all receipts and expenditures properly had or incurred by the Calais Water & Power Company from and after said first day of January, and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from the amount to be paid under such final decree, as the case may be. All findings of fact by said justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performance of all the other terms and conditions imposed by the court, the plants, properties and franchises of the Calais Water & Power Company shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any stage of the proceedings, and the proceedings shall not be discontinued except upon the consent of both parties.

Sec. 14. Valid contracts of water company to be assumed by district. All contracts now existing between the Calais Water & Power Company and any person or corporation for supplying water in the city of Calais and also in the Town of Milltown, New Brunswick, Canada, unless that portion of the properties and franchises of the Calais Water & Power Company are not acquired by said water district, shall be assumed and carried out by the Calais Water District.

Sec. 15. Act void unless property of water company is acquired. If said water district shall fail to purchase or file its petition to take by eminent domain, before July 1, 1962, as in this act provided, the plant, properties, franchises,

rights and privileges owned by the Calais Water & Power Company, then this act shall become null and void, except that the corporate entity shall continue until all obligations and liabilities waived under the provisions of Section 7 have been settled in full or otherwise enforced pursuant to the provisions of said Section 7; and the provisions of said Section 7, for the enforcement of obligations and liabilities, shall continue applicable.

Sec. 16. Costs and expenses of taking, directed by court. All costs and expenses of the taking of the property of the Calais Water & Power Company arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by Section 13.

Sec. 17. Saving clause. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstance shall not be affected thereby.

Sec. 18. Effect on existing statutes. All acts and portions of acts, whether public or private, which are inconsistent herewith are hereby repealed to the extent they have application to the district hereby created; provided, however, that all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes of 1954, chapter 44, and all acts amendatory thereof or additional thereto.

Referendum; effective date; certificate to Secretary of State. This act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of the City of Calais at any regular or special election called and held for the purpose within one year after approval of this act. Such special election shall be called, advertised and conducted according to the law relating to municipal elections; provided that the board of registration in the City of Calais shall not be required to prepare for posting, nor the city clerk to post, a new list of voters; and for the purpose of registration of voters said board shall be in session the 3 secular days next preceding such election, the first 2 days thereof to be devoted to the registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up its records of said sessions. A check list shall be used at such election.

The city clerk shall prepare the required ballots, on which he shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Calais Water District, passed by the 100th 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 purposes hereof immediately upon its acceptance by a majority of the legal voters voting at such election; but only if the total number of votes cast for and against the acceptance of this act at said election equals or exceeds 20% of the total vote for all candidates for Governor cast in said city at the next previous gubernatorial election.

The result of such election shall be declared by the municipal officers of the City of Calais and due certificate thereof shall be filed by the city clerk with the Secretary of State.