

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 696

H. P. 494

House of Representatives, January 24, 1963

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Maddox of Vinalhaven.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

AN ACT to Incorporate the Port Clyde Water District.

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

Whereas, the present water supply in the Village of Port Clyde in the Town of St. George is inadequate to serve the inhabitants and particularly those inhabitants who do not have private wells, but take their water from the Saint George Water Company; and

Whereas, serious shortages of water endangering the public health were experienced during the summer of 1962, and a more adequate supply of water must be immediately obtained; and

Whereas, an adequate supply of pure water is essential to the health and well-being of the inhabitants of the Village of Port Clyde in the Town of St. George; 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. Territorial limits; name; purposes. That part of the Town of St. George in Knox County within the area hereinafter described, and the inhabitants within that area, are hereby created a body politic and corporate by

the name of Port Clyde Water District for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, agricultural, industrial and municipal purposes.

The area within the district is to be comprised of that part of the Town of St. George known as the Village of Port Clyde, and bounded and described as follows:

Beginning at the most Southeasterly portion of Turkey Cove, which Cove is a portion of the St. George River in Knox County; thence Easterly to the Glenmere Road; thence crossing the Glenmere Road to its intersection with the road leading from Glenmere to Martinsville and passing the Ridge Church, so called, or Baptist Church of St. George, to the intersection of said road with Route 137, being the State highway between Tenants Harbor and Port Clyde; thence due East to the waters of Mosquito Harbor; thence Southerly, Easterly, Southerly and Southwesterly by tidal waters around Marshall Point at said Port Clyde and continuing by tidal waters Northerly and Northwesterly around Hooper Point and Howard Point to Turkey Cove and thence by the waters of Turkey Cove to the place of beginning.

Sec. 2. Powers of Port Clyde Water District; source of supply. The said district, for the purposes of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from any surface or underground lake, pond, river, stream, brook, spring or vein of water in the territorial limits above set forth.

Sec. 3. Right of eminent domain conferred; authorized to lay pipes over public ways; authorized to erect reservoirs. The said district for the purposes of its incorporation is hereby authorized to take and hold as for public uses, by purchase or otherwise, including by right of eminent domain, any lands or interests therein, or water rights necessary for erecting and maintaining dams, for flowage, for power, for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining aqueducts and other structures, for taking, distributing, discharging and disposing of water and for rights-of-way or roadways to its sources of supply, dams, standpipes, wells, power stations, reservoirs, mains, aqueducts, structures and lands, including the right to acquire by purchase or by exercise of eminent domain so much of the franchise, rights and privileges of Saint George Water Company as incorporated under the private and special laws of the State of Maine in 1909, chapter 18, as pertain to that portion of its water system now existing in the aforesaid area of said Port Clyde Water District, including all lands, waters, water rights, dams, structures, reservoirs, pipes, fixtures and hydrants, together with all real estate so used or usable, and said Saint George Water Company is hereby authorized to sell and transfer to the Port Clyde Water District its aforesaid property and franchise rights.

In case the trustees of the district fail to agree with Saint George Water Company on terms of purchase on or before October 1, 1963, then said district is hereby authorized to take said properties, interest and franchises of said Saint George Water Company, except cash and accounts receivable, subject to all liens and mortgages, if any, of said company, in the manner hereinafter provided

wherein said Saint George Water Company and its mortgagees, if any, or those having an interest in any realty which is of record, shall be the parties defendant. Said water district, through its trustees, is hereby authorized on or before November 1, 1963, to file a petition in the office of the clerk of courts for the County of Knox, addressed to any Justice of the Supreme Judicial Court who, after notice to said defendants aforesaid, shall, after hearing and within 60 days after the filing of said petition, appoint 3 disinterested appraisers, none of whom shall be residents of Knox County and one of whom shall be learned in the law, for the purpose of fixing the valuations of the plant, property and franchises of said Saint George Water Company. The court may order under proper terms the production for inspection by the trustees or the said appraisers of all books and papers pertaining to the issue on petition for same by the petitioner, unless same are voluntarily produced.

Upon motion of the petitioner, the justice may fix a time at which the water company shall file in the clerk's office of said county for the inspection of the petitioner the following: (1) schedule showing the names, residences and water service of all its customers on the date of filing said petition, with the rate charged therefor; (2) copies of all contracts in force on the date of filing said petition; (3) an itemized statement of the gross income earned during its last complete fiscal year and up to the date of filing said petition, and all operating expenses and fixed charges, paid or incurred during said period and properly chargeable thereto; (4) a memorandum of all real estate, water rights or interest therein, owned or controlled on the date of filing said petition, with such brief description thereof as will reasonably identify the same; (5) 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, lengths and specifying the street, roads or ways where situated; (6) an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on the date of the petition. At or before such hearing the justice 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 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 to administer oaths and to compel attendance of witnesses. The appraisers so appointed shall, after due notice and hearing, fix the valuation as of November 1, 1963, of said plants, properties and franchises at what they were fairly and equitably worth so that said water company shall receive just compensation for same, from which date interest on said valuation over and above the amount of mortgage liens and incumbrances thereon assumed by said district as of said date, shall run at the rate of 6% per year and all rents and profits accruing thereafter shall belong to said water district.

The report of said appraisers or of a majority of them, together with the report of a stenographer certified by said appraisers as correct, shall be filed in said Clerk's office within 6 months after their appointment and any Justice of the

Supreme Judicial Court may after notice and hearing confirm or reject the same or recommit it if justice so requires. Upon the confirmation of said report, the court so sitting shall thereupon make final decree upon the entire matter including the application of the purchase money and transfer of the property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases.

Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures, properly had or incurred, including but not limited to all expenditures for betterments, extensions and capital additions from and after the date of the filing of said petition, and all net rents and profits accruing from and after the date of filing said petition, 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. In such accounting the water company shall have credit for prepaid insurance and property taxes paid by it pro rated from November 1, 1963, and taxes assessed after November 1, 1963, shall be credited to it, if paid, or assumed by the district. All findings of fact by said court and the appraisers shall be final, but any party aggrieved may take exceptions as to any matters of law, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing of such exceptions and there heard unless otherwise agreed, or the law court for good cause shall order further time for hearing thereon. After the filing of said petition it shall not be discontinued or withdrawn by said water district, and the said Saint George Water Company may thereafter on its part cause said valuation to be made as herein provided, and shall be entitled to appropriate process to compel said water district to perform the terms of the final decree, and to pay for said plant, property and franchises in accordance therewith. On payment or tender by said district of the amount determined by the final decree and the performance of all other terms and conditions imposed by said court, the said plant, properties and franchises of Saint George Water Company shall become vested in said Port Clyde Water District.

The said district is hereby authorized to lay water pipes, aqueducts and fixtures as may be necessary and convenient for its purposes in and through the streets, ways and highways of the said district and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures, 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 to public travel as practicable, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

The said district is hereby authorized, for the purpose of its incorporation, to erect and maintain reservoirs, wells, standpipes and other structures necessary and convenient for its corporate purposes.

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 thereto herein or by subsequent act of the Legislature.

Sec. 4. Procedure in crossing public utility rights-of-way. In case of any crossing 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 such 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.

Sec. 5. Board of trustees; election. Within 60 days of the time that this act takes effect, the town clerk of St. George shall call a meeting of the inhabitants of said district in the same manner in which the town meeting is called. Said meeting shall organize by the election of a moderator and then shall elect 3 trustees by the Australian ballot as provided for in the Revised Statutes of 1954, chapter 90-A, section 37, as enacted by the public laws of 1957, chapter 405, section 1. All inhabitants of said district who are bona fide voters in said Town of St. George shall be entitled to vote in said meeting and in subsequent district meetings. The selectmen of St. George shall prepare a check list of the inhabitants of said district entitled to vote in said meetings. Said trustees elected at said first district meeting shall determine by lot the term of office of each trustee so that one shall serve until the day of the next annual district meeting, one until the 2nd annual district meeting and one until the 3rd annual district meeting. On the same day of the annual town meeting of the inhabitants of said St. George in each year, there shall be held the annual meeting of the inhabitants of the water district. At each annual meeting of said district the voters therein shall elect one trustee to hold office for a term of 3 years. Said meeting shall also determine the compensation to be given said trustees for their services and shall make recommendations to the trustees as to the manner in which the affairs of the district are to be handled. Each trustee shall hold office until his successor is elected and signifies his acceptance of his office. No oath of office shall be required of said trustees. In case of the resignation, removal of his principal place of abode from said district or inability of a trustee to serve, the selectmen of said Town of St. George shall declare a vacancy in the office of said trustee and they shall immediately thereafter select a new trustee to serve until the next annual meeting of said district, at which time a trustee shall be elected to serve the balance of the term of office of the said trustee. No member of the board of selectmen of said Town of St. George shall be a trustee of the water district.

Sec. 6. Board of trustees; powers and duties. All the affairs of the said district shall be managed by said board of trustees. As soon as convenient after the members of said board have been elected, said trustees shall meet and organize by the election of a chairman and a clerk, adopt a corporate seal and choose a manager who shall handle the funds of said district, and such other employees as they deem necessary and proper. Said manager shall be bonded in an amount

considered proper by said trustees and the cost of said bond shall be borne by the district. All trustees shall be eligible for reelection. The said manager and other employees shall hold offices during the pleasure of the trustees. They may also ordain and establish such bylaws, not inconsistent with the laws of the State, as are necessary for their convenience and the proper management of the affairs of said district. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said water district, of its financial and physical condition, and of such other matters and things pertaining to said district as shall show the inhabitants of said district how said trustees are fulfilling the duties and obligations of their trust. Such reports shall be made and filed with the board of selectmen of the Town of St. George on or before March 1st of each year.

Sec. 7. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the Town of St. George and other water districts, for supply of water, and said Town of St. George is authorized to contract with it for the supply of water for municipal purposes.

Sec. 8. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investment for savings banks. For accomplishing the purposes of this act, said district, through its trustees, is authorized to borrow money from time to time, not exceeding \$100,000, 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 and to establish a fund therefor, of obtaining or providing money to pay or to meet any necessary expenses and liabilities under the provisions of this act, including expenses in the creation of this district, in securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and making 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 at one time or in uniform or varying installments, and with or without call provisions. 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 the public laws of 1957, chapter 405, section 1. The said notes and bonds shall be legal investments for savings banks.

Sec. 9. Property tax exempt. The property of said district shall be exempt from all taxation by the Town of St. George.

Sec. 10. Water rates; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the territory supplied by the district and 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.
- 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 no 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 year, it may be turned into the sinking fund.

Sec. 11. Incidental rights and powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Referendum; effective date; certificate to Secretary of State. In view of the emergency cited in the preamble, this act shall take effect when approved, only for the purpose of permitting its submission to the legal voters of the Town of St. George present and voting at the next annual town meeting or a special town meeting to be called by the town clerk before June 1, 1963.

The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Port Clyde Water District, passed by the 101st Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at said meeting; provided the total number of votes cast for and against the acceptance of this act at said meeting equaled or exceeded 20% of the total vote cast for all candidates for Governor in said town at the next preceding gubernatorial election.

The result of the vote shall be declared by the municipal officers of the Town of St. George and due certificate thereof shall be filed by the town clerk with the Secretary of State.