

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION
(EMERGENCY)

ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1645

H. P. 1177

House of Representatives, January 17, 1966

The Committee on Public Utilities suggested.

JEROME G. PLANTE, Clerk

Presented by Mr. Benson of Southwest Harbor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SIX

AN ACT to Incorporate the Seal Cove Water District.

Emergency preamble. Whereas, there is an urgent need of improved fire protection and an increased supply of pure water for drinking, sanitary and other purposes in the Town of Tremont; and

Whereas, additional water supply sources must be developed and major alterations, improvements and extensions made to said water supply system; and

Whereas, properties, funds and grants are now available which may not be available if a district is not formed at once; 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 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. The inhabitants of and territory within the Town of Tremont shall be and hereby are constituted a body politic and corporate by the name of "Seal Cove Water District" for the purpose of supplying the inhabitants of said districts with pure water for domestic, sanitary, commercial and municipal purposes and for the extinguishment of fires.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is authorized to take, hold, collect, store, flow, use, detain and distribute to and in the Town of Tremont water from any surface or underground brook, stream, spring, vein of water or other water source in said Town of

Tremont or from such other source of supply as is approved by the Department of Health and Welfare, and may purchase water for said purposes.

Sec. 3. May exercise eminent domain. The said district, for the purposes of its incorporation, is authorized to take and hold, as for public uses, by purchase or otherwise, including by right of eminent domain, in the Town of Tremont any lands or interests in land 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, power stations, reservoirs, mains, aqueducts, structures and lands.

The said district is authorized to lay in and through the streets, roads, ways and highways of the Town of Tremont and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures as may be necessary and 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 proper condition.

The said district is authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes. Nothing herein contained shall be construed as authorizing said 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 herein or by subsequent Act of the Legislature.

Sec. 4. Procedure in exercising right of eminent domain and adjustment of damages. After the original acquisition, for which provision is made in section 8, the said district in exercising, from time to time, any right of eminent domain conferred upon it by law or through or under the franchise of any water company by it acquired 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 water district and for the safe, economical and efficient furnishing of an adequate water supply. 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 limi-

tations in connection therewith, and shall furnish to the district a true copy thereof, attested by the clerk of the commission. 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; provided, however, that when property is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice of the tenant for life, shall require notice by publication, in such manner as it may deem proper, to all others interested. Entry may be made on any private land prior to the filing of any such application for the purpose of making surveys, the district being responsible for any damage, resulting from such entry, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

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 Hancock County may have such damages assessed by them. The procedure and all subsequent proceedings and rights 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 must be crossed. 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 said district, the Public Utilities Commission 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 satisfaction of such public utility, but at the expense of the district.

Sec. 6. Board of trustees. All the affairs of said district shall be managed by a board of 3 trustees, residents therein, who shall initially be appointed by the municipal officers of the Town of Tremont. They 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 Town of Tremont shall elect a successor to serve the full term of 3 years and in case of any other vacancy arising from any cause, it 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. During his term of office, no selectman of said Town of Tremont shall serve as a member of the board of trustees in said district.

The first board of trustees shall be appointed within 10 days after the acceptance of this Act by the voters of said district; one to serve until the first annual meeting of the town occurring thereafter, one until the 2nd and one until the 3rd such meeting. Thereafter one member shall be elected at the time of each annual meeting 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 2 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement 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. When necessary, they may choose a treasurer and other needful officers and agents who shall serve at their pleasure, and whose compensation shall be fixed by said trustees. They may employ the town manager of the town as an employee of the district. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor except as trustees, unless authorized by vote of the Town of Tremont.

The compensation of the trustees shall be \$50 each per year, unless otherwise provided by vote as above set forth.

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

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 Tremont and the Southwest Harbor Water Co., and said Town of Tremont and the Southwest Harbor Water Co. are authorized to contract with it, for the supply of water for municipal purposes.

Sec. 8. Authorized to acquire property and franchises formerly of Seal Cove Water Company. Upon the acceptance of this Act by the voters of the Town of Tremont, and the appointment of the trustees, the municipal officers of the Town of Tremont at the written request of the trustees shall transfer and deliver to said water district without compensation all of the plant, properties, franchises, rights and privileges owned by the Town of Tremont which were formerly owned or used by the Seal Cove Water Co. and subsequently transferred and delivered to said Town of Tremont, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the Town of Tremont, and if and when so acquired, the said district, in addition to the powers conferred by this Act, shall have and enjoy and be entitled to exercise all the rights, privileges and franchises formerly of said Seal Cove Water Company and may do and perform any and all the acts and things authorized by the original charter of said Seal Cove Water Company, as amended, insofar as they are not inconsistent with the provisions of this Act. Said town is authorized to transfer and convey its franchises and property to said water district as aforesaid.

Sec. 9. Valid contracts of town to be assumed by district. All valid contracts now existing between the Town of Tremont and any person or corporations for supplying water in the Town of Tremont shall be assumed and carried out by said Seal Cove Water District.

Sec. 10. 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 water district, through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest-bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under this Act, including the expenses incurred in the creation of the district, of 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, but shall not incur a total indebtedness exceeding the sum of \$750,000. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi-municipal corporation within the provisions of the Revised Statutes of 1964, Title 30, section 5053 and Title 13, section 144, as amended, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks. Notes and bonds having a term of more than one year shall be issued only after the approval of the Public Utilities Commission.

Sec. 11. Property tax exempt. The property of said district shall be exempt from all taxation in the Town of Tremont.

Sec. 12. Water rates; application of revenue; 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:

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

2. **Interest.** To provide for the payment of the interest on the indebtedness created by the district.

3. **Sinking fund.** 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 obligation of the district or invested in such securities as savings banks are allowed to hold. 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. The trustees may also, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district whereunder equal payments of principal and interest combined may be required.

4. **Surplus.** If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 13. Incidental 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. The district may accept grants, loans and advances of state and federal funds for surveys, plant preparations and construction of any or all facilities required to fulfill the purposes of this Act on such terms as may be prescribed under applicable state and federal laws and regulations.

Sec. 14. Separability. It is the intention to confer the whole or any part of the powers herein provided for, and if any of the powers or provisions, or part thereof, are for any reason illegal, the remaining powers or provisions, or part thereof, shall remain in full force and effect.

Sec. 15. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes of 1964, Title 35, and all Acts amendatory thereof or additional thereto.

Referendum; emergency clause; 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 district, present and voting at a regular or special election or elections to be called by the selectmen of the Town of Tremont and held not later than January 1, 1967. Said election shall be called by the municipal officers of the Town of Tremont and shall be held at the regular voting place in the town. Such regular or special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the municipal officers shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said municipal officers shall be in session on the secular day next preceding said election, and on the day of said election until the polls are closed, the days to be devoted to registration of voters and to the verification and correction of said lists and to complete and close up their records of said session. Absent voting ballots shall not be used.

The town 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 Create the Seal Cove Water District, passed by the 102nd Legislature in Special Session, 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 immediately upon its acceptance by a majority of the legal voters voting thereon at any such election, but only if the total number of votes cast for and against acceptance of this Act in said election equals or exceeds 20% of the last gubernatorial vote of said Town of Tremont; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections to be called and held before January 1, 1967.

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