

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1504

H. P. 1098

House of Representatives, March 12, 1971

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

BERTHA W. JOHNSON, Clerk

Presented by Mrs. Lincoln of Bethel.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Incorporate the Andover Water District.

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

Whereas, the Andover Water Company, which presently serves a portion of the Town of Andover, has expressed a desire to sell its property and franchises to the district, if one is created; and

Whereas, the present water supply is inadequate to serve all the users of the district and a new or more adequate supply must be immediately obtained; and

Whereas, an adequate supply of pure water is essential to the health and well-being of the inhabitants of that part of the Town of Andover served by said district; and

Whereas, it is imperative that action be taken at the earliest possible time to eliminate such condition; 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; corporate name; purposes. Subject to section 17 hereof, the inhabitants and territory of that part of the Town of Andover

currently being served by the Andover Water Company, but not including East Andover, North Andover, South Andover and other parts of the Town of Andover not now being served by said Andover Water Company, in the County of Oxford, shall constitute a body politic and corporate under the name of Andover Water District for the purpose of supplying said Town of Andover, and the inhabitants of said district, with pure water for domestic, sanitary, commercial and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is authorized to take, collect, store, hold, divert, use, flow, detain and distribute water from Stony Brook and any other lake, pond, stream, brook or river and from any surface or underground brook, spring or vein of water in said Town of Andover, and from any other source from which the Andover Water Company is now authorized to take water, including sources outside the Town of Andover.

Sec. 3. Right of eminent domain conferred. The said water 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, 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, power stations, reservoirs, mains, aqueducts, structures and lands. 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 or as provided in section 8.

Sec. 4. Authorized to lay pipes over public ways. The said district is authorized to lay in and through the streets, roads, ways, highways and bridges in said Town of Andover 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.

Sec. 5. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities. Said water 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. Said water district is also authorized to lay, construct and maintain its pipes and fixtures in, over and under navigable waters and to build and maintain structures therefor, subject to the laws of the United States; also, to supply water to

any public utility now supplying water in the County of Oxford, subject to the consent of the Public Utilities Commission.

Sec. 6. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in sections 10 and 11, 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 shall then 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 limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the secretary 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. 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 to 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.

Sec. 7. Adjustment of damages; procedures as in laying out of highways. 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 Oxford County, may have such damages 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. 8. 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, upon petition by the district, 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 or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 9. Board of trustees; appointment; compensation. All the affairs of said district shall be managed by a board of trustees composed of 3 members — residents of the district — who shall be chosen as hereinafter provided.

As soon as may be after the acceptance of this Act as hereinafter provided, the selectmen of the Town of Andover shall appoint 3 trustees of said district to hold office as follows: one to serve until the first annual meeting of subscribers of said district to be held on the first Saturday in May, 1972; one to serve until the 2nd annual meeting of subscribers of said district to be held on the first Saturday in May, 1973 and one to serve until the 3rd annual meeting of subscribers of said district to be held on the first Saturday in May, 1974. At each annual meeting of subscribers of said district, beginning with the first annual meeting of subscribers of said district following the acceptance of this Act, one trustee shall be elected by the subscribers, to serve until the annual meeting of subscribers of said district occurring 3 years thereafter and until his successor is elected and qualified.

Whenever any trustee ceases to be a resident of said district, he vacates the office of trustee. All trustees, if residents of said district, shall be eligible for reelection. Vacancies in the office of trustee shall be filled by the selectmen appointing a successor to serve only until the next annual meeting of the district. At such annual meeting, the unexpired portion of said term, if any, shall be filled in the same manner as the trustees are elected.

As soon as convenient after their appointment, the first board of trustees shall hold a meeting in the Town of Andover and organize by the election from their own number of a president and clerk, adopt a corporate seal, and choose, not necessarily from their own number, a treasurer, and, when necessary, all other needful officers and agents, who with the treasurer shall serve at their pleasure and whose compensation shall be fixed by said trustees. Whenever a vacancy occurs in the office of president, clerk or treasurer, it shall be promptly filled by said board of trustees. They may also ordain and establish such bylaws as are necessary for their own convenience and the proper management of the affairs of the district. Said trustees may procure an office and incur such expense as may be necessary. 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.

The municipal officers of the Town of Andover shall at the time of appointment of the first board of trustees fix the compensation of the trustees, which shall not exceed \$200 per year for each trustee.

Sec. 10. Authority to purchase; right of eminent domain to take property of Andover Water Company. The Andover Water District is authorized

and empowered to acquire by purchase or by the exercise of the right of eminent domain which right is expressly delegated to said district for said purpose, the entire plant, property, franchises, rights and privileges of the Andover Water Company, except in cash assets and accounts receivable, including all stocks in other companies, lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said company, whether the record title thereto is or is not in said Andover Water Company. Said company is authorized to sell, transfer and convey its franchises and property to said water district.

Sec. 11. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Andover Water Company upon the terms of purchase of the above mentioned property, on or before January 1, 1972, said district, through its trustees aforesaid, is authorized to take said plant, property and franchises as for public use by petition therefor in the manner hereinafter provided. Said water district, through its trustees, is authorized on or before July 1, 1972, to file a petition in the clerk's office of the Supreme Judicial Court of the County of Oxford, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Andover Water Company and its mortgagees, 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 Oxford County, for the purpose of fixing a valuation of said plant, property and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection 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 enforced from time to time as any justice of said Supreme Judicial 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 the said water company shall file in the clerk's office of the Supreme Judicial Court of the County of Oxford for the inspection of the petitioner, so far as they relate to the service of the area presently served by Andover Water Company, the following: First, schedule showing the names, residences and water service of all of its customers on the first day of January, 1972, with the rate charged therefor; 2nd, copies of all contracts in force on said first day of January, 1972; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of January, 1972, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; 4th, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said first day of January, 1972, 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, giv-

ing in detail quantities, sizes and lengths, and specifying the streets, roads or ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of January, 1972. Such orders may be enforced from time to time by any Justice of said Supreme Judicial Court, in term time or in vacation, upon motion of either party, 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 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; and 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 Supreme Judicial 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 which they are fairly and equitably worth, so that water company shall receive just compensation for all and the same. The first day of January, 1972, shall be the date as of 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 said 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, 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 appraisers proceed to fix the valuation of the property, plant and franchises 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 order further time for hearing thereon. Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore 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 company in respect of the territory comprising said district belonging to this period, from and after said first day of January, 1972, 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. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said company used and usable in supplying water in the Town of Andover shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings and the proceedings shall not be discontinued except upon the consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting justice, or in case of his inability to act, any justice of said court appointed by the Chief Justice may, after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the cause may require. Nothing herein contained shall preclude said district from acquiring said properties from said company at any time by mutual agreement.

Sec. 12. Authority to contract for municipal supply; all valid contracts to be assumed. Said water district is authorized to make contracts with the Town of Andover or any municipal corporation therein for the purpose of supplying water as contemplated by this Act, and the Town of Andover by its selectmen or any municipal corporation in said town by its proper officers is authorized to enter into a contract with said district for a supply of water for public uses on such terms and for such time as the parties may agree, which contract when made shall be legal and binding on all parties thereto, and said Town of Andover or any municipal corporation therein for said purposes may raise money in the same manner as for other municipal charges. All valid contracts now existing between Andover Water Company and any person, corporations or municipal corporations for supplying water in that part of the Town of Andover currently being served by said Andover Water Company shall be assumed and carried out by said Andover Water District, provided copies of said contracts shall have been filed by said company in accordance with the order of court as set forth in section 11.

Sec. 13. Property tax exempt. The property of said district shall be exempt from all taxation in the Town of Andover and in any other towns where any part of its plant may be located.

Sec. 14. 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 said purposes, said district, through its trustees, without vote of the inhabitants of said district, 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 Andover, the district being authorized to reimburse said Town of Andover for any such expense incurred by it, and in acquiring properties, paying damages, laying pipes, mains, aqueducts, 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, said district, through its trustees, without the vote of its inhabitants, 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.

Said bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine. 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 "Andover 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 shall bear the facsimile signature of the treasurer.

All such bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is declared to be a quasi-municipal corporation within the meaning of the Revised Statutes of 1964, Title 30, Section 5053, and all provisions of said section shall be applicable thereto. The said district may refund or 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 said district shall be legal investments for savings banks in the State of Maine and shall be tax exempt.

Sec. 15. Water rate; 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 the rates for water so supplied shall be uniform within the territory supplied by the district whenever the installation and maintenance of mains and the costs of service is substantially uniform, but nothing in this Act shall preclude said district from establishing higher rates than the regular rates in sections where for any reason the cost of construction and maintenance or the cost of service exceeds the average, but such higher rates shall be uniform throughout the sections where they apply. Said rates shall be so established as to provide revenue for the following purposes:

1. **Expenses.** To pay the current expenses for operating and maintaining

the water system, including provisions for such replacements and extensions as may become necessary.

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

3. **Percent of indebtedness.** To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such 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. 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.

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

Sec. 16. Incidental rights and powers granted. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

Sec. 17. Emergency clause; local referendum for residents of that part of the Town of Andover now served by Andover Water Company; meetings, how called; 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 residing in that part of the Town of Andover currently being served by the Andover Water Company at any special meeting called and held for the purpose not later than January 1, 1973. Such special meeting shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the registrar of voters shall not be required to prepare for posting, nor the town clerk to post, a new list of voters. The registrar of voters shall be in session the 3 secular days next preceding such meeting. The subject matter of this Act shall be reduced to the following question: "Shall the Act to Incorporate the Andover Water District, passed by the 105th Legislature, be accepted?" The voters shall indicate in the usual manner their opinion of the same. This Act shall take effect for all the purposes thereof immediately upon its acceptance by a majority of the legal voters residing in that part of the Town of Andover currently being served by the Andover Water Company voting at said meeting; provided that the total number of votes cast for and against the acceptance of this Act at said meeting equals or exceeds 20% of the total vote for all candidates for Governor in said part of the Town of Andover currently being served by the Andover Water Company at the next previous gubernatorial election; but failure of approval by the necessary percentage of voters at any such meeting shall not prevent a subsequent meeting or meetings to be held for said purpose within the time limitation of section 18.

The result of the votes in said district shall be declared by the municipal officers of the Town of Andover and due certificate thereof shall be filed by the clerk of said town with the Secretary of State.

Sec. 18. Certain sections inoperative on failure to acquire Andover Water Company plant. If said water district shall fail to acquire before July 1, 1973 by purchase or by right of eminent domain as in this Act provided, the plant, property, franchises, rights and privileges owned by the Andover Water Company and used or usable in supplying water to the Town of Andover, then this Act shall be inoperative, null and void.

Sec. 19. Public Utilities Commission statutes shall govern the district. Nothing herein 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 shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes of 1964, Title 35, Part 1, and all Acts amendatory thereof and additional thereto.

Sec. 20. Costs and expenses of taking directed by court. All costs and expenses of taking of the property of the Andover Water Company arising under this Act shall be paid and borne as directed by the court in the final decree provided in section 11.

STATEMENT OF FACT

The purpose of this bill is reflected in the emergency preamble.