

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1665

H. P. 1265

House of Representatives, April 13, 1971

Reported by Mr. Marsh from Committee on Public Utilities and printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Create the Orono-Veazie Water District.

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

Sec. 1. Territorial limits; corporate name; purposes. Subject to section 16, the inhabitants and territory within the Towns of Orono and Veazie in the County of Penobscot shall be and hereby are constituted a public municipal corporation under the name of "Orono-Veazie Water District" for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, manufacturing 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 any lake, pond, stream or river and from any surface or underground brook, spring or vein of water in said Towns of Orono and Veazie, and from any other source from which the Penobscot County Water Company is now authorized to take water, including sources outside of the Towns of Orono and Veazie.

Sec. 3. Right of eminent domain conferred. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase, gift, or by exercise of the right of eminent domain, which right is hereby expressly delegated to said water district for said purposes, 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 and standpipes, for preserving the purity of the water and watershed, for laying and maintaining aqueducts, mains 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, standpipes, 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 7.

Sec. 4. Authorized to lay pipes, public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways within said district and across private lands therein, and to maintain and replace all such pipes, aqueducts, mains and fixtures as may be necessary, and may excavate through any lands when necessary and convenient for its corporate purposes; and whenever said district shall lay any pipes, aqueducts or mains 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 and maintain dams, reservoirs, etc. The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, pumping stations, with all necessary appliances required therefor, reservoirs, standpipes and structures necessary and convenient for its corporate purposes.

Sec. 6. Procedure in exercising rights of eminent domain; assessment of damages; appeal procedure. Said water district shall be liable for all damage that shall be sustained by any person or corporation in his or its property by the taking of any land or interest therein whatsoever, for water, or by flowage, or by excavating through any land for the purpose of laying pipes, aqueducts or mains, building dams or constructing reservoirs or standpipes.

In exercising any right of eminent domain conferred upon it by law, from time to time, in the taking of lands or interests therein, or water rights, the said district shall file in the office of the county commissioners of Penobscot County and record in the registry of deeds in said county plans of the location of all such lands or interests therein or water rights, with an appropriate description and the names of the owners thereof, if known. Notice of the filing shall be sent by mail to the owners at the address appearing on the tax records of the municipality in which the land is located. When for any reason the district fails to acquire the property authorized to be taken, and which is described in such location, or the location recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof, and in such case the district shall be liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing, whereupon possession may be had of all said lands or interests therein or water rights so taken, but title shall not vest in said district until payment therefor.

If any person or corporation sustaining damages by any taking as aforesaid and said water district shall not mutually agree upon the sum to be paid therefor, either party, upon petition to the county commissioners of Penobscot County, may have such damages assessed by them; and the procedure and all subsequent proceedings and right of appeal thereon 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 town ways.

Sec. 7. Procedures in crossing of railroads or utility rights-of-way. In case of any crossing of a railroad or the right-of-way occupied by the transmission or distribution lines of an electric company, unless consent is given by the company owning or operating such railroad or transmission line, 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, upon petition setting forth a description of said premises and the reasons for said crossing, after notice given as said commission may prescribe, determine the place, manner and conditions of such crossing; and all work within the limits of such railroad location or right-of-way shall be done under the supervision and to the satisfaction of such railroad company or electric company, as the case may be, but at the expense of the district, unless otherwise ordered by said Public Utilities Commission, which shall award to said railroad or electric company any damage suffered by it occasioned by said crossing.

Sec. 8. Board of trustees; appointment; compensation. All the affairs of said district shall be managed by a board of trustees composed of 5 members, 3 to be appointed by the municipal officers of the Town of Orono and 2 to be appointed by the municipal officers of the Town of Veazie, within 30 days after the acceptance of this Act by the inhabitants of said district as hereinafter provided, but none of the selectmen of either of said towns shall be appointed to the board of trustees. As soon as convenient after the members of said board have been appointed, said trustees shall hold a meeting in the Town of Orono and organize by the election of a president and clerk, from their own membership, adopt a corporate seal and choose 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. At the said first meeting they may determine by agreement, or failing to agree, they shall determine by lot, the term of office of each trustee so that one shall retire each year and the term of office of the first trustee shall end at the end of the municipal year of the Town of Orono following the acceptance of this Act, and thereafter, the term of office of a trustee shall expire with the end of each municipal year. Whenever the term of office of a trustee expires, the body which appointed said trustee shall appoint a successor to serve the full term of 5 years, and in case any other vacancy arises from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of the town from which he received his appointment, he vacates the office of trustee. 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 not be eligible to any office under the board, except that of president and clerk. The trustees, as such, shall receive as compensation for their services an amount to be determined by them not to exceed \$500 each per year; but the treasurer may be allowed such compensation as the trustees shall determine.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member who shall serve as clerk or clerk pro tem.

Sec. 9. Temporary loans negotiated; issue of bonds. For accomplishing the purposes of this Act, said water district, through its trustees, is authorized to borrow money temporarily and to issue therefor the negotiable notes of the district, and for the purpose of refunding the indebtedness so created, for paying any necessary expenses and liabilities incurred under the provisions of this Act, including the expenses incurred in the creation of a district, in securing sources of supply, taking water and land, paying damages, taking rights-of-way or other interests in real estate, by purchase or otherwise, laying pipes, aqueducts and mains, constructing, installing, maintaining and operating reservoirs, standpipes, dams, pumping stations and whatever equipment may be necessary or incidental to the construction and installation of such system of water works, and making renewals of or extensions, additions and improvements to the same, the said water district, through its trustees, may, from time to time, issue bonds of the district to the amount or amounts necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi-municipal corporation within the meaning of the Maine Revised Statutes, Title 30, section 5053, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 10. Contracts for supply of water. Said district, through its trustees, is authorized to contract with persons and corporations, including the Bangor Water District, for the purpose of supplying water as contemplated by this Act, and the Bangor Water District is authorized to distribute water to the Orono-Veazie Water District at such rates and under such terms as shall be established by the Public Utilities Commission.

Sec. 11. Authority to purchase; right of eminent domain to take property of Penobscot County Water Company. The Orono-Veazie 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 Penobscot County Water Company located in or serving the Towns of Orono and Veazie, except its cash assets, amounts receivable, and its land and office building on Forest Avenue in Orono, including all 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 Penobscot County Water Company. Said company is authorized to sell, transfer and convey its franchises and property to said water district.

Sec. 12. Procedures in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Penobscot County Water Company upon the terms of purchase of the above mentioned property, on or before May 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 November 1, 1972, to file a petition in the clerk's office of the Superior Court of the County of Penobscot, in term time or in vacation, addressed to any justice of the Supreme Judicial Court, who, after due notice to said Penobscot 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 Penobscot 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 Superior Court of the County of Penobscot for the inspection of the petitioner, so far as they relate to the service of the Towns of Orono and Veazie, the following: **First**, schedule showing the names, residences and water service of all of its customers on the first day of May, 1972, with the rate charged therefor; **second**, copies of all contracts in force on said first day of May, 1972; **third**, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of May, 1972, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; **fourth**, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said first day of May, 1972, with such brief description thereof, as will reasonably identify the same; **fifth**, brief descriptions, specifications and plans of all reservoirs, mains, pipe, 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 **sixth**, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of May, 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 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 first day of May, 1972, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run and the net balance of all rents and profits accruing thereafter shall belong to and be paid to said water district as provided for in the final decree of court.

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 request 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 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 exception 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 (a) all additions to and deductions from the plant and property, as of the first day of May, 1972, adjusting the valuation to reflect such changes as may occur from the first

day of May, 1972, to the date of the final decree, and (b) 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 May, 1972, and all net rents and profits accruing thereafter, and shall order (a) the adjusted value of the plant and property and (b) the net balance of the rents and profits, if any, 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 performance of all the other terms and conditions so imposed by said court, possession of and title to the entire plant, property and franchises of said company used and usable in supplying water in the Towns of Orono and Veazie 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. 13. Property tax exempt. The property of said district shall be exempt from all taxation in the Towns of Orono and Veazie and in any other towns where any part of its plant may be located.

Sec. 14. Water rates. 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 cost 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. To pay the current expenses for operating and maintaining the water system.
2. To provide for the payment of the interest on the indebtedness created or assumed by the district.
3. 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.

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

Sec. 15. 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 municipal corporation hereby created.

Sec. 16. Acceptance subject to referendum. Unless accepted and approved by a majority vote of the legal voters within said proposed water district voting at an election called and held for the purpose by the municipal officers of the Towns of Orono and Veazie, on the 2nd Monday of October, 1971, this Act shall forthwith become inoperative. The registrars of voters in Orono and Veazie shall be in session the 3 secular days next preceding said special election for the purpose of revising the voting lists. The subject matter of this Act shall be reduced to the following question: "Shall the Act to Create the Orono-Veazie Water District, passed by the 105th 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. The result shall be declared by the municipal officers of each town and due certificates thereof filed by the town clerks with the Secretary of State. This Act shall take effect for all the purposes thereof immediately upon its acceptance by a majority of the legal voters in both Orono and Veazie voting at said election; provided that the total number of votes cast for and against the acceptance of this Act in each of said towns equals or exceeds 20% of the total vote for all candidates for Governor in said towns at the next previous gubernatorial election; but failure of approval by the necessary percentages of voters at any such election in either or both of said towns shall not prevent a subsequent election or elections to be held for said purpose within the time limitation of section 18.

Sec. 17. 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 the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of the Maine Revised Statutes, Title 35, and all acts amendatory thereof or additional thereto.

Sec. 18. Certain sections inoperative on failure to acquire Penobscot County Water Company plant. If said water district shall fail to purchase, before May 1, 1972, the plant, property, franchises, rights and privileges owned by the Penobscot County Water Company and used or usable in supplying water to the Towns of Orono and Veazie or shall fail to file a petition before November 1, 1972, to exercise its right of eminent domain as in this Act provided, for the acquisition of said plant, property, franchises, rights and privileges owned by the Penobscot County Water Company and used or usable in supplying water to the Towns of Orono and Veazie, then this Act shall be inoperative, null and void.

Sec. 19. Costs and expenses of taking directed by court. All costs and expenses incurred by the District in the acquisition or in the taking of the property of the Penobscot County Water Company arising under the provisions of this Act shall be paid and borne as directed by the court in the final decree provided in section 12.

Sec. 20. Prior act of incorporation void on effective date. Upon the effective date of this Act, the Orono-Veazie Water District created under the provisions of Chapter 50 of the Private and Special Laws of Maine, 1969, is hereby declared to be inoperative, null and void.

STATEMENT OF FACT

The legality of the original incorporation of Orono-Veazie Water District by chapter 50 of the private and special laws of Maine, 1969, was questioned. The original Act submitted, L. D. 1097, indicated a problem with the quality of the water supplied by the Penobscot County Water Company. This Act will allow the company to seek out a new source of supply; if it does not, or does not satisfy the inhabitants, they may accept this Act and purchase or take the water company as provided herein. This Act is consistent with the Legislature's long standing policy of requiring a local vote of the inhabitants of a proposed district before it becomes effective as law.