

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1794

H. P. 1372

House of Representatives, May 28, 1971

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Faucher of Solon.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Incorporate the Jackman Water District.

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

Whereas, it is essential that a public district be formed in Jackman to take over a private water company forthwith in order not to delay the reconstruction of Route 201 and to prevent the interruption of water supplies; and

Whereas, it is vital that this be done at once for the benefit of the people of the area and the traffic to and from Canada; 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. The territory comprising the town of Jackman and the inhabitants of said town are hereby created a body politic and corporate under the name of "Jackman Water District" for the purposes of supplying inhabitants and others in the district and also inhabitants and others within Moose River and Dennistown Plantation with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes. All incidental rights, power and privileges, necessary to the accomplishment of the main objects herein set forth, are hereby granted to the said Jackman Water District.

Sec. 2. Powers. The said district for the purposes of its incorporation is hereby authorized to take, hold, divert, use and distribute water from any

river, lake, pond, stream, brook, spring, well or other source, natural or artificial, in said district and said Moose River and Dennistown.

Sec. 3. Eminent domain. The said district, for the purposes of its incorporation, is hereby authorized to take and hold within the area covered by the district as for public uses, real estate and personal estate and any interest therein necessary for such purposes, by purchase, lease or otherwise, and is hereby authorized to exercise the right of eminent domain as hereinafter provided, to acquire for such purposes any lands or interest therein or water rights necessary for erecting and maintaining dams, plants and works, for flowage for power, for pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts and other structures for taking, distributing, discharging and disposing of water, for forming basins and reservoirs, for erection of buildings for pumping works for use therein, for laying pipes and maintaining same, and for laying and maintaining conduits for carrying, collecting and discharging water, for filtering, rectifying and treating plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures, plants, works facilities and lands.

The said district is hereby authorized to lay in and through the streets, roads, ways and highways within the district and in Moose River and Dennistown, and across private lands therein, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures as may be necessary and convenient for any of its corporate purposes and authorities, and whenever said district shall lay or install any pipes, aqueducts or fixtures 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 so replaced as to leave the surface in proper condition.

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 therein, or by subsequent act of the Legislature.

Sec. 4. Procedure in exercising right of eminent domain; assessment of damage; appeal procedure. In exercising any rights of eminent domain that are herein conferred upon said district, the district shall file for record in the registry of deeds in Somerset County plans of the location of lands or interest therein to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire property which it is authorized to take and which is described in such location, or if the location as 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 is 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 act 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 such lands or interest therein so taken, but title thereto shall not vest in said district until paid for.

If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Somerset County, may have said damages assessed by them. The procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

Sec. 5. Procedure if public utility must be crossed. In case of any crossing of such 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. 6. Trustees; how appointed; meetings; officers. All of the affairs of said district shall be managed by a board of 3 trustees who shall be chosen as hereinafter provided. During his term of office no selectman of Jackman shall serve as a trustee.

As soon as may be after the acceptance of this act as hereinafter provided, the municipal officers of Jackman shall appoint 3 trustees of said district to hold office as follows: one to serve until the first annual meeting of said district following the acceptance of this Act; one to serve until the 2nd annual meeting of said district following such acceptance; and one to serve until the 3rd annual meeting of said district following such acceptance. At each annual meeting of said district, beginning with the first annual meeting after the acceptance of this Act, as their terms expire, a trustee shall be appointed by the municipal officers of Jackman to serve until the annual meeting of said district occurring 3 years thereafter and until his successor is appointed and qualified. Whenever any trustee who was appointed as a resident of said district ceases to be a resident of said district, he vacates the office of trustee. All trustees shall be eligible for reelection. Vacancies in the office of trustee shall be filled for the unexpired term at a special meeting of the district, unless said vacancy shall occur within 3 months prior to the next annual meeting of said district, at which annual meeting such vacancy shall be filled.

As soon as convenient after their appointment, the first board of trustees 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. They may meet by agreement without such notice. They shall then organize by electing from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer. They shall adopt a corporate seal and may

adopt by-laws and perform any other acts within the powers delegated to them by law. Following the appointment of the new trustees at each annual meeting of said district, the trustees shall elect from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer, whose salary shall not exceed \$200, to serve until the next annual meeting of said district and until their respective successors are elected and qualified.

The trustee from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. Members of the board of trustees shall be eligible to any office under the board. The trustees, as such, shall receive as compensation for their services an amount to be determined by them not to exceed \$50 each per year.

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. They shall make and publish an annual report, including a report of the treasurer, and such report may be included in, and published as part of, the Annual Town Report of said Town of Jackman.

Sec. 7. Annual meeting of district. After the acceptance of this charter and the organization of the board, the annual meeting of the district for choice of a trustee shall be held within the district on the first Monday of each April, at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws, and the municipal officers shall then appoint the trustee then required.

Sec. 8. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including said municipalities, and said municipalities are authorized to contract with it, for the supply of water for municipal purposes.

Sec. 9. Authorized to acquire certain property of Jackman Water Company. The said district, through its trustees, is hereby authorized to acquire by purchase all or part of the entire plant, properties, franchises, rights and privileges owned by Jackman Water Company, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools, and all apparatus and appliances used or usable in supplying water in said district; and said company is hereby authorized to sell, transfer and convey its said plants, properties, franchises, rights and privileges to said district.

Sec. 10. Procedure in case trustees and Jackman Water Company fail to agree on terms of purchase. In case the said trustees fail to agree with the Jackman Water Company upon terms of purchase, then said water district, through its trustees aforesaid, is hereby authorized to take said properties, interest and franchises of said Jackman Water Company as set forth in section 9, in the manner hereinafter provided wherein the Jackman 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 to file a petition in the clerk's office of the Superior Court for the County of Somerset, addressed to any justice thereof

who, after notice to said defendant aforesaid, shall, after hearing and within 60 days after the filing of said petition, appoint 3 disinterested appraisers for the purpose of fixing the valuations of the plant, property and franchises of said Jackman Water Company described in section 9. 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. The said appraisers shall have the power to administer oaths. The appraisers so appointed shall, after due notice and hearing, fix the valuation as of the date of filing said petition 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. 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 Superior 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. 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. 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 Jackman Water Company as described in section 9 shall become vested in said Jackman Water District.

Sec. 11. 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, 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 Jackman, the district being authorized to reimburse said town for any such expenses incurred by them, and in acquiring properties, paying damages, laying pipes, mains, aqueducts and 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, 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; provided, however, that the total indebtedness of the said district shall not exceed the sum of \$300,000 at any time outstanding; but bonds, notes or other evidences of indebtedness of the district which have matured or otherwise become payable and for the payment of which adequate funds have been provided by depositing such funds with a paying or disbursing agent named in such bonds, notes or other evidences of indebtedness in trust for such purpose shall not be considered to be outstanding.

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, but none of them shall run for a longer period than 40 years from the date of original issue thereof. 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 "Jackman 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 thereto 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 hereby declared to be a quasi-municipal corporation within the meaning of the Revised Statutes, Title 30, section 5053, and all provisions of said section shall be applicable thereto. The said district may refund and 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. 12. Property tax exempt. The property, both real and personal, rights and franchises of said district shall be forever exempt from taxation.

Sec. 13. 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 or trustees for the water used by them. Said rates shall be uniform within the territory supplied by the district and shall be subject to the approval of the Public Utilities Commission. Said rates shall be so established as to provide revenue for the following purposes:

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

II. To provide for the payment of the interest on the indebtedness created by the district;

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by the district other than serial bonds.

and notes, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness, or if serial bonds or notes are issued, to pay the principal of such bonds and notes payable in such year. 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 or fiduciaries or trustees in this State are now or hereafter allowed to hold;

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

Sec. 14. Existing statutes not affected; rights conferred subject to provisions of law. Nothing therein 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, except those referred to in section 10, shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes, Title 35, and all acts amendatory thereof or additional thereto.

Referendum; effective date. 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 at a special election or elections called and held for the purpose. Said elections shall be called by the municipal officers of the Town of Jackman and shall be held at the regular voting places; the dates of said elections shall be determined by said municipal officers, but the first such meeting of said town shall not be later than the first day of November, 1971. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding such election, the first and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up its records of said session. The town clerk shall reduce the subject matter of this Act to the following question: "Shall the Act to Incorporate the Jackman 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. This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of said district voting at such elections, but only if the total number of votes cast for and against the acceptance of this act in said special election equals or exceeds 20% of the total number of names on the check list of voters of said district provided for herein, which check list shall be used at such election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

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

STATEMENT OF FACT

In order not to hold up the reconstruction of Route 201 in the Town of Jackman with all the expense necessitated in connection with relaying present water facilities, it is necessary to form a public district to take over the assets of the present water company and thereafter expand the system.