

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 456

H. P. 359

House of Representatives, January 29, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Faucher of Solon.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Creating the New Portland Water District.

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

Whereas, there is urgent need to rehabilitate and expand the capacity of existing mains and supply of water for residential and municipal water services in the village of North New Portland; and

Whereas, it is desirable to provide for fire protection in said village; and

Whereas, there are grants-in-aid and other funds available which are not presently available unless a water district is formed; and

Whereas, it is necessary to take immediate steps to expand mains and water supplies in order to protect the health and welfare of the inhabitants of said water district; 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 and purpose. The inhabitants of and the territory within that part of the Town of New Portland in the County of Somerset, more commonly known as North New Portland village, as is hereafter described: Beginning at the New Portland-Embden town line on the Hancock Pond Road, so called, and extending westerly along the

road to the center of North New Portland village at the post office a distance of approximately 1.4 miles including 4 rights-of-way southerly from said road; first to a spring 500 feet more or less from the highway at the Jackson Farm, and second a right-of-way to the reservoir 1,000 feet southwesterly from the highway on the west side of Fletcher Hill, plus a right-of-way to a spring above the reservoir approximately 1,000 feet southeasterly of said reservoir, plus a 4th right-of-way northwesterly approximately 1,000 feet from the reservoir to the highway. Also, including a right-of-way northeasterly from said highway approximately 500 feet to the pumping station and lower springs, all such rights-of-way being occupied by pipe lines and other property of North Village Water Company. Also beginning at the post office at the center of said North New Portland village along the following roads and streets:

- 1) Southerly on the North Anson Road approximately 4,000 feet to a point opposite home of Charles Collins, Jr.
- 2) Northerly approximately 4,000 feet to the top of Fred Berry Hill, so called, for the location of a future stand pipe or reservoir.
- 3) Westerly approximately 1,500 feet to a junction at Hall Corner, so called, crossing Gilman Stream by an underwater pipe westerly of the highway bridge.
- 4) Thence westerly 500 feet, more or less, to a point opposite Hilda Trudel's residence.
- 5) Thence southerly from Hall Corner a distance of 2,000 feet, more or less, to a point opposite the residence of Roland Pease.
- 6) Also including all land 500 feet on either side of the above described roads and all streets in North New Portland village;

shall be and hereby are constituted a body politic and corporate under the name of "New Portland Water District" for the purpose of supplying the said district and the inhabitants of said district with pure water for domestic, commercial, sanitary, industrial, agricultural and municipal purposes.

The authority granted under this chapter shall supersede the authority granted the North Village Water Company to serve said area.

Sec. 2. Powers of New Portland Water District. Said New Portland Water District is authorized for the purposes of its incorporation to take, collect, store, flow, use, divert, distribute and convey to said district or any part thereof water from any lake, pond, stream or river, or from any surface or underground brooks, springs or veins of water, natural or artificial, within the area of the district or within the area of the Town of New Portland and it is also authorized to locate, construct and maintain aqueducts, pipes, conduits, dams, wells, reservoirs, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor, and do anything necessary to furnish water for public purposes and for the public health, comfort and convenience of the inhabitants and others of the district, or to contract to do any and all of the foregoing things.

All incidental powers, rights and privileges necessary to the accomplishment of the main objectives herein set forth are granted to said district hereby created.

Sec. 3. Authorized to lay mains, pipes, conduits, etc., through public ways and across private lands. The district is authorized to lay in and through the streets, roads, ways and highways of the Town of New Portland and across private lands therein, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures and appurtenances as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes, mains, conduits, aqueducts and fixtures or appurtenances 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. 4. Rights of eminent domain. The said district, for the purposes of its incorporation, is authorized to take and hold, as for public uses, real estate and personal estate, and any interest therein, necessary or convenient for such purposes, by purchase, lease or otherwise and is expressly authorized to exercise the right of eminent domain, as hereinafter provided, to acquire for such purposes any land 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 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, 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 district to take by right of eminent domain any of the property or facilities of any other public service corporation 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. 5. Procedure in exercising rights of eminent domain; assessment of damages; appeal procedure. In exercising any rights of eminent domain that are conferred upon said district, the district shall file for record in the Somerset County registry of deeds 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 so 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. 6. Procedure if public utility must be crossed. In case of crossing of any public utility, unless consent is given by the company owning and operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by such district, the Public Utilities Commission, 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. 7. Trustees; how elected; first board; meeting; officers. All of the affairs of said district shall be managed by a board of trustees composed of 5 members, all of whom shall be residents of the district, as hereinafter provided for, and elected as hereinafter provided.

First board. Within 14 days after the acceptance of this Act, as hereinafter provided, the selectmen of the Town of New Portland, who are especially appointed for this purpose, shall give notice of a special election of the New Portland Water District, for the purpose of selecting the first board of trustees, by posting a notice at least 30 days prior to the date set for election. The notice shall be published in one public and conspicuous place in the Town of New Portland. The candidates for office shall obtain nomination papers from the clerk of the Town of New Portland, who is appointed especially to act as clerk in this particular instance. The form of the nomination papers, the form of the ballot, etc., shall be as hereinafter provided. After the selection of the first board, the only eligibility for the office of trustee of the district shall be residence within the district and eligibility to vote, and all subsequent trustees shall be elected as hereinafter provided in an annual election to be held on the 3rd Monday of March in each year.

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 said notice being delivered in hand to the other 4 members, not less than 2 full days before the meeting; provided that the trustees so elected may meet by agreement without such notice and upon appropriate waiver. The first order of business shall be to draw by lot to fix the terms of the trustees. Thereafter, trustees shall be selected to serve for a 3-year term.

After the selection of the terms of the trustees, the trustees shall then organize by electing from their own number a president and clerk, and, not necessarily from their own number, a treasurer and a registrar of voters for the district, as hereinafter provided. The trustees shall adopt a corporate seal and may adopt bylaws and perform any other acts under the powers delegated by law to them.

Election of trustees. The trustees to be so elected shall be chosen by a plurality vote of the legal voters within said district. All nominations of candidates so to be voted for shall be made by nomination papers signed in the aggregate for each candidate by not less than 25 qualified voters within said district. Each voter signing the nomination paper shall make his signature in person and add to it his place of residence, and each voter may subscribe to as many nominations as there are trustees to be elected and no more. Such nomination papers shall, before being filed, be submitted to the registrar of voters of the district, who shall forthwith certify thereon what number of the signatures are names of qualified voters in said district; one of the signers to each such separate paper shall swear to the truth thereof and the certificate of such oath shall be annexed to or made under the nomination papers. Such nomination papers shall be filed with said clerk of the district at least 7 days, exclusive of Sundays, previous to the day of such election. With such nomination papers, shall also be filed the consent in writing of the person or persons nominated. All nomination papers being filed and being in apparent conformity with the foregoing provisions, shall be deemed to be valid, and if not in apparent conformity, they may be seasonably amended under oath. In case any candidate who has been duly nominated under the provisions hereof shall die before the day of election, or shall withdraw in writing, the vacancy may be supplied in the manner herein provided for such nominations. The name so supplied for the vacancy shall, if the ballots have not been printed, be placed on the ballots instead of the original nomination; or, if the ballots have been printed, new ballots containing the new nomination shall, if practicable, be furnished, or slips containing the new nomination shall be printed under the direction of the district clerk, which may be pasted in proper place upon the ballots, and thereafter shall become part of said ballots as if originally printed thereon.

Form of ballot. The ballot shall be substantially as follows: It shall contain the names of all candidates so nominated printed in one column under the heading, "For Trustees of New Portland Water District." Above such heading shall be printed "Vote for two," or such number as may be appropriate, "Trustees." Make a cross (X), or a check mark (✓), to the right of each name voted for. As many blank spaces shall be left after the name of the candidates as there are trustees to be elected, in which the voter may by writing insert the name or names of any person or persons for whom he desires to vote. In casting his ballot the voter shall mark a cross (X), or a check mark (✓), against and to the right of such names on such ballot as he desires to vote for, not to exceed the number of trustees so to be elected. If the voter shall desire to vote for any person or persons whose name or names are not on the printed ballot, he may fill in such name or names in the blank spaces left therefor by writing the name therein. Where the voter so

adds by writing in such new name or names, his vote for such new name or names shall be counted therefor although he may fail to mark a cross (X), or a check mark (✓), against the same. The result of such election shall be declared by said trustees and due certificates thereof filed with the district clerk. All trustees shall serve until their successors are elected and qualified.

Meeting of trustees. Each year after the election of a trustee, or trustees, said trustees shall forthwith hold a meeting to elect officers as hereafter provided. They shall organize by the election of a president and clerk, and may choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. 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. Whenever the term of office of a trustee expires, his successor shall be elected by a plurality vote by the inhabitants of said district, and upon nomination made as herein provided for the election of trustees; and for the purpose of such election a special election shall be called and held on the first Monday of March in each year, the same to be called by the trustees of said district in the same manner as town meetings are called and for this purpose, the trustees are vested with the powers of selectmen of towns. The trustees so elected shall serve the full term of 3 years; and in case any vacancy arises in the membership of the board of trustees, it shall be filled in like manner for the unexpired term by special election to be called by the trustees of the district. When any trustee ceases to be a resident of the district, he shall vacate such office of trustee and the vacancy shall be filled as aforesaid. All trustees shall be eligible to reelection, but no person holding the office of selectman or road commissioner in the Town of New Portland shall be eligible to nomination or election as trustee. Said trustees may procure an office and incur such expenses as may be necessary. Each trustee shall receive for his services in whatever capacity, compensation as determined by said board, but said compensation shall not exceed \$200 per year.

The trustees shall appoint a registrar of voters for said district who may also be the registrar of voters for the Town of New Portland and fix his salary. It shall be the registrar's duty to make and keep a complete list of all the eligible voters of said district, and the list prepared by him, as provided by the laws of the State of Maine, shall govern the eligibility of any voter. In determining the eligible voters of the district, the registrar of voters shall exclude from his lists and from all check lists the legal voters who are resident outside the territorial limits of said water district as defined in this Act, and all warrants issued for elections by the trustees shall be varied accordingly to show that only the voters resident within the territorial limits of said water district are entitled to vote thereunder.

Sec. 8. Annual report. The trustees 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 the Town of New Portland.

Sec. 9. District and towns authorized to make and assume contracts. Said district, through its trustees, is authorized to contract with persons and

corporations, including the Town of New Portland, and said Town of New Portland is authorized to contract with it, for the supply of water for municipal purposes.

All valid contracts now existing between the North Village Water Company and any persons, corporations or municipal corporations for supplying water in the Town of New Portland shall be assumed and carried out by said New Portland Water District.

Sec. 10. Authorized to acquire property and franchises of North Village Water Company. The said district, through its trustees, is hereby authorized to acquire by purchase all of the entire plant, properties, franchises, rights and privileges owned by North Village Water Company located within the Town of New Portland, 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. Said water district is further authorized and empowered to acquire by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by North Village Water Company, 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 area of the district, 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 rights, privileges and franchises of said North Village Water Company.

Sec. 11. Authorized to receive governmental aid, 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, is authorized to receive both state and federal aid grants; to borrow money temporarily and to issue therefor its negotiable notes, 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 New Portland, the district being authorized to reimburse said Town of New Portland for any such expense 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, without the vote of its inhabitants, but only with the approval of the Public Utilities Commission, is also authorized to issue, from time to time, bonds, notes or other evidence of indebtedness of the district or in such amount or amounts, bearing interest at such rate or rates, selling at par, or at a discount or at premium and having such other terms and provisions as the trustees shall determine, except that loans running for one year or less will not require Public Utilities Commission approval.

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 provisions 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 "New Portland Water District," shall be signed by the treasurer and countersigned by the president 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 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 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 free from taxation.

Sec. 12. Property tax exempt. The property, both real and personal, rights and franchises of said district shall be forever exempt from taxation in the Town of New Portland.

Sec. 13. Rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said water rates shall be uniform within the territory supplied by the district, and the water rates shall be subject to the approval of the Public Utilities Commission.

Said water rates shall be so established as to provide revenue for the following purposes:

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

II. Payment of the interest. To provide for payment of the interest on the indebtedness created or assumed by the district.

III. Sinking fund. 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 said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as fiduciaries or trustees in the State of Maine are now or hereafter 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.

IV. Remaining surplus. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 14. 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 Revised Statutes of 1964, Title 35, and all acts amendatory thereof and additional thereto, to the extent that said Title 35 and said amendments thereto affect the operations of the district.

Sec. 15. Act void unless property and franchise of North Village Water Company is acquired. If said district, pursuant to the provisions hereof, shall fail to purchase or file its petition to take by eminent domain, within one year from the date of the first meeting of the board of trustees provided in section 7 hereof, the plant, properties, franchises, rights and privileges owned by North Village Water Company and used or usable in supplying water to a part of the Town of New Portland, then this Act shall be inoperative, null and void.

Emergency clause; effective date; referendum; 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 at a special election to be called and held for the purpose by the municipal officers of the Town of New Portland, which meeting shall be called and held within 30 days of the effective date of this Act. Said special election shall be called, advertised and conducted according to the laws relating to municipal elections to the extent applicable hereto. The registrar of voters of New Portland shall prepare a list of the eligible voters of the Town of New Portland who live within the area of the district. This list shall become the legal list to be used at said special election. Persons claiming to be eligible voters in this special election whose names do not appear on the list so prepared shall present their claims to be listed as eligible voters to the registrar of voters of the Town of New Portland, who shall be in session on the day preceding said special election to hear and determine such claims. After the list is complete, the registrar of voters of New Portland shall compute the total number of eligible voters on said list and certify the list and the total to the municipal officers of New Portland so that it will be available on the date of said special election.

The town clerk of New Portland shall prepare the required ballots. He shall reduce the subject matter of this Act to the following question: "Shall the Act creating the New Portland Water District, passed by the 107th Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" and "No" their opinion of the same.

The result of the vote in said district shall be declared by the municipal officers of the Town of New Portland and due certificate thereof filed by the

town clerk of New Portland with the Secretary of State and if said result so filed shows that a majority of the vote is for approval of this Act, it shall take complete effect; provided, that the total number of votes cast for or against the acceptance of this Act equals or exceeds 20% of the total eligible voters which had been previously determined by the certificate and list filed by the registrar of voters of New Portland.

Failure of approval of this Act at such first meeting shall not be construed to prevent its resubmission for acceptance at any subsequent meeting, called for the purpose in accordance with the terms hereof, held within 2 years from the effective date of this Act. The municipal officers of the Town of New Portland are vested with authority as hereinbefore provided.

STATEMENT OF FACT

This Act, if passed by this Legislature and approved by the voters of the prospective water district, will establish the New Portland Water District.