

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 661

S. P. 194

In Senate, February 13, 1975

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

HARRY N. STARBRANCH, Secretary

Presented by Mrs. Cummings of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Creating the Newport Water District.

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

Whereas, the present water system owned by the Maine Water Company is inadequate and in need of immediate improvement and repair to protect the quality of the water and the health and well-being of the inhabitants of Newport; 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 the provisions of section 19 hereof, the inhabitants and territory of the Town of Newport in the County of Penobscot shall constitute a body politic and corporate under the name of "Newport Water District" for the purpose of supplying said Town of Newport and the inhabitants and others of said district, with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is hereby authorized to take, collect, store, hold, divert, use, flow, detain and distribute water from any well, lake, pond, stream or river

and from any surface or underground brook, spring or vein of water in said Town of Newport and from any other source from which the Maine Water Company is now authorized to take water.

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 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 hereby authorized to lay in and through the streets, roads, ways, highways and bridges in said Town of Newport, 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 hereby 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 Penobscot, 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 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; provided that when property is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice 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, the said district shall notify the landowner 7 days prior to its entering upon the property, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording in the registry of deeds of Penobscot County 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; procedure 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 Penobscot 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. All of the affairs of said district shall be managed by a board consisting of not less than 3 nor more than 5 trustees, residents therein, who shall be elected by Australian Ballot at the annual

town meeting, except that the initial trustees shall be elected at a special town meeting as soon as may be after the acceptance of this Act.

The terms of the members of said board shall be as follows: One to serve until the first annual town meeting of the Town of Newport following the acceptance of this Act; one to serve until the 2nd annual town meeting of said town following such acceptance; and one to serve until the 3rd annual town meeting of said town following such acceptance; and may elect one to serve until the 4th annual town meeting of said town following such acceptance and may elect one to serve until the 5th annual town meeting of said town following such acceptance. At each town meeting of said town, beginning with the first annual town meeting following the acceptance of this Act, one trustee shall be elected to serve until the annual town meeting occurring 5 years thereafter and until his successor is elected and qualifies.

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 until the next annual town meeting of the Town of Newport, and at such annual town meeting the unexpired portion of said term, if any, shall be filled as hereinbefore directed.

As soon as convenient after their election, 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 members, not less than 2 full days before the meeting; provided that they may meet by agreement without such notice. They shall 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 bylaws and perform any other acts within the powers delegated to them by law. Following each annual town meeting of said Town of Newport, the trustees shall elect from their own number a chairman and a clerk, and, not necessarily from their own number, a treasurer to serve until the next annual town meeting of said Town of Newport and until their respective successors are elected and qualified.

The trustees 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 sums 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 be compensated by a sum not exceeding \$200 per year, which sum shall be set by the selectmen. The trustees shall hold at least 6 public meetings per year and shall publish a notice 5 days prior to the meeting, stating the place, date and time of said meeting.

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. 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. The trustees shall publish an

independent auditor's report and make the same available once a year to the users.

Sec. 10. Authority to purchase; right of eminent domain to take property of Maine Water Company. The Newport Water District is hereby 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 Maine Water Company, except its 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 Maine Water Company. Said company is hereby 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 Maine Water Company upon the terms of purchase of the above-mentioned property, on or before January 1, 1976, said district, through its trustees, 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, 1976, to file a petition in the clerk's office of the Superior Court for the County of Penobscot, addressed to any justice of said court, who, after due notice to said Maine Water Company and its mortgagees, shall, after hearing and within 30 days after the date at which said petition is answerable, 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 court, 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 for the County of Penobscot for the inspection of the petitioner, so far as they relate to the service in the Town of Newport, the following: 1st, schedule showing the names, residences and water service of all its customers on the first day of July, 1976, with the rate charged therefor; 2nd, copies of all contracts in force on said first day of July 1976; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of July, 1976, 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 July, 1976, 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, giving in detail quantities, sizes, 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 July, 1976. Such orders may be enforced from time to time by any Justice of the Superior Court, 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 the 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 July, 1976, 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 as soon as may be after their appointment, and any Justice of said 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, 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 appeal 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 appeal shall be claimed on the docket within 30 days after such final decree is signed, entered and filed and notice thereof has been given to the parties or their counsel and said appeal shall be prosecuted under the Rules of Civil Procedure. 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 July, 1976, 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 performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said com-

pany used and usable in supplying water in the Town of Newport 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 consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, any Justice of the Superior Court 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 case 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 hereby authorized to make contracts with the Town of Newport or any municipal corporation therein for the purpose of supplying water as contemplated by this Act, and the Town of Newport by its selectmen or any municipal corporation in said town by its proper officers is hereby 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 Newport 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 Maine Water Company and any persons, corporations or municipal corporations for supplying water in the Town of Newport shall be assumed and carried out by said Newport Water District, provided copies of said contracts shall have been filed by said company in accordance with the order of the 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 Newport and in any other towns where any part of its plant may be located.

Sec. 14. Authority to borrow money. For accomplishing the purposes of this Act, said water district, through its trustees, without vote of the inhabitants, is authorized to borrow money temporarily and to issue therefor the negotiable notes of the district, 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 acquiring the properties and franchises of said Maine Water Company by purchase or otherwise, of assuming and paying all mortgages, liens and encumbrances thereon as provided in sections 10 and 11, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and making renewals, extensions, additions and improvements to the same, and protecting the watershed, to an amount or amounts necessary in the judgment of the trustees therefor, provided the total indebtedness shall not exceed the sum of \$1,000,000 at any one time 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 larger 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 "Newport 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 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 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. 15. Water rates; 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. Said rates shall be so established as to provide revenue for the following purposes:

1. **Current expenses.** To pay the current expenses for operating and maintaining the water system and to provide for necessary extensions and renewals of said system.

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

3. **Sinking fund.** To provide each year a sum equal to not less than 1% nor more than 7% of the entire indebtedness created by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the 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. The trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that no 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. Public Utilities Commission statutes shall govern the district. Nothing herein contained is intended to repeal or shall be construed as re-

pealing 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 I, and all Acts amendatory thereof and additional thereto.

Sec. 18. Costs and expenses of taking directed by court. All costs and expenses of the taking of the property of the Maine 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 11.

Sec. 19. Emergency clause; 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 Town of Newport at any regular meeting, or at any special meetings called and held for the purpose not later than March 10, 1975. Such special meetings shall be called, advertised and conducted according to 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 Newport Water District, passed by the 107th 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 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 10% of the total vote for all candidates for Governor in said town 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 this section.

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

Sec. 20. Certain sections inoperative on failure to acquire Maine Water Company plant. If said water district shall fail to acquire before July 1, 1977, by purchase or by right of eminent domain as in this Act provided, the plant, property, franchises, rights and privileges owned by the Maine Water Company and used or usable in supplying water to the Town of Newport, then this Act shall be inoperative, null and void.

STATEMENT OF FACT

The purpose of this Act is to increase the quantity and improve the quality of water being supplied in the Town of Newport, to expand the present facilities in order to attract new industry and to better supply existing industry and users.