

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1840

H. P. 1509

House of Representatives, April 18, 1975

Approved for introduction by a Majority of the Committee on Reference of Bills pursuant to Joint Rule 10. Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Silverman of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Incorporate the Woodlands Utilities District.

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

Whereas, an adequate supply of pure water and of power is essential to the health and well-being of the inhabitants of the Town of Baileyville; and

Whereas, it is desirable that a public district be formed in Baileyville to be able to take over a private water and electric company forthwith in order to supply water and electric service to the people of the area; and

Whereas, it is vital that this be done at once for the benefit of the people of the area; 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 Baileyville and the inhabitants of said town are hereby created a body politic and corporate under the name of "Woodland Utilities District" for the purpose of supplying inhabitants and others in Baileyville with pure water for domestic, sanitary, commercial, industrial, agricultural and municipi-

pal purposes and also for the purposes of making, buying, generating, selling and distributing electricity, light and power to the inhabitants and others in said Baileyville. All incidental rights, powers and privileges, necessary to the accomplishment of the main objects herein set forth, are hereby granted to the said Woodland Utilities 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 Baileyville, and from any other source of water from which the Woodland Water and Electric Company is now authorized to take water or from such other source of supply as is approved by the Department of Health and Welfare whether within or without the territorial limits of the district.

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 pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts, electric pole lines and other structures for taking, distributing, discharging and disposing of water and electricity, for forming basins and reservoirs and electric pole lines, 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 generating, 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, reservoirs, mains, aqueducts, structures, plants, works facilities, generation, transmission and distribution facilities and lands.

The said district is hereby authorized to lay in and through the streets, roads, ways and highways within the district and across private lands therein, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts, poles 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, poles 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 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 or as provided in section 10.

Sec. 4. Procedure in exercising right of eminent domain; assessment of damage; appeal procedure. After the original acquisition for which provision is made in sections 9 and 10, 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 and electric 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 and shall require such notice as the commission may direct to be given to all persons interested, at least 14 days before the date of the hearing. The commission may view the premises if necessary, 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 utilities district and for the safe, economical and efficient furnishing of adequate water or electrical service. In authorizing any taking, the commission may attach such reasonable terms, limitations and restrictions as justice and equity 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 of Washington, the property shall be deemed and treated as taken; provided that when the 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 in addition to the notice to the tenant for life, notice shall be given in such manner as it may deem proper by the commission to all other interested parties. 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 Washington County of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

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 Washington County, may have such 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 any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of such 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 5 trustees who shall be chosen as hereinafter provided. During his term of office no selectman shall serve as a trustee.

As soon as may be after the acceptance of this Act as hereinafter provided, the municipal officers of Baileyville shall appoint 5 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, one to serve until the 3rd annual meeting, one to serve until the 4th annual meeting and one to serve until the 5th annual meeting. As the term of each trustee expires a successor trustee shall be appointed for a term of 5 years or until a 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 reappointment. 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 by the municipal officers as aforesaid.

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 4 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 bylaws 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, to serve until the next annual meeting of said district and until their respective successors are appointed 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 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 \$200 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 an independent auditor's report and such report may be included in, and published as part of, the annual town report of said Town of Baileyville.

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 bylaws, 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 Baileyville, and said Baileyville is authorized to contract with it for the supply of water and electricity for municipal purposes and to provide it with financial assistance.

Sec. 9. Authorized to acquire certain property of Woodland Water and Electric Company. The said district, through its trustees, is hereby authorized to acquire by purchase all or part of the plant, properties, franchises, rights and privileges owned by Woodland Water and Electric Company, including lands, waters, water rights, reservoirs, pole lines, pipes, machinery, fixtures, hydrants, tools and apparatus and appliances used or usable in supplying water and electricity 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 Woodland Water and Electric Company fail to agree on terms of purchase. In case the said trustees fail to agree with the Woodland Water and Electric Company upon terms of purchase, then said district, through its trustees aforesaid, is hereby authorized to take said properties, interest and franchises of said Woodland Water and Electric Company as set forth in section 9, in the manner hereinafter provided wherein the Woodland Water and Electric Company and its mortgagees, if any, or those having an interest in any realty which is of record, shall be the parties defendant. Said district, through its trustees, is hereby authorized to file a petition in the clerk's office of the Superior Court for the County of Washington, addressed to any justice thereof who, after notice to said defendant aforesaid, shall, after hearing and within 45 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 Woodland Water and Electric Company described in section 9. The court may order under proper terms the production for inspection and viewing by the trustees or the said appraisers of all books and papers and real and personal property 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 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 3 months after **their appointment, unless extended** by the court, 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 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 Woodland Water and Electric Company, as described in section 9, shall become vested in this 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 said town, 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, pole lines and conduits, constructing, maintaining and operating a water and electric 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.

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 "Woodland Utilities 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 and electrical 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 of trustees for the water or electricity 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:

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

2. To provide for the payment of the interest on the indebtedness created 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 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;

4. 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 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, 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 election shall be called by the municipal officers of the Town of Baileyville 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, 1975. 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 elections, 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 their 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 Woodland Utilities District,’ passed by the 107th 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 elections equals or exceeds 20% of the total number of names on the check list of voters of said town provided for herein, which check list shall be used at such elections; 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 and due certificates thereof filed by the town clerk with the Secretary of State.

STATEMENT OF FACT

A privately owned water and electric utility presently serves the inhabitants of the Town of Baileyville with water and electricity. There is the reasonable likelihood that improvements may be desirable to said system and, accordingly, the within charter is necessary to have a public district available to take over and operate the facilities, if found advisable.