

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2058

S. P. 648

In Senate, January 22, 1976

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Curtis of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Concerning the Charter of the Orono-Veazie Water District.

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

Whereas, the Maine Supreme Judicial Court has recently held one portion of the charter of the Orono-Veazie Water District unconstitutional; and

Whereas, the Orono-Veazie Water District supplies vitally needed water to many inhabitants of the Orono-Veazie area; and

Whereas, the district's charter must be cured of its unconstitutionality as soon as possible to avoid any possible interference with its authority to supply water to its customers; 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:

P. & S. L. 1971, c. 67, is repealed and the following enacted in place thereof:

Sec. 1. Territorial limits; corporate name; purposes. Subject to section 16, the inhabitants and territory within the Towns of Orono and Veazie in the County of Penobscot shall be and hereby are constituted a public municipal corporation under the name of "Orono-Veazie Water District" for the

purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, manufacturing and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is authorized to take, collect, store, hold, divert, use, flow, detain and distribute water from any lake, pond, stream or river and from any surface or underground brook, spring or vein of water in said Towns of Orono and Veazie, and from any other source from which the Penobscot County Water Company is now authorized to take water, including sources outside of the Towns of Orono and Veazie.

Sec. 3. Right of eminent domain conferred. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase, gift, or by exercise of the right of eminent domain, which right is hereby expressly delegated to said water district for said purposes, any lands or interests therein or water rights necessary for erecting and maintaining dams, for flowage, for power, for pumping its water supply through its mains, for reservoirs and standpipes, for preserving the purity of the water and watershed, for laying and maintaining aqueducts, mains and other structures for taking, distributing, discharging and disposing of water and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, standpipes, mains, aqueducts, structures and lands. Nothing herein contained shall be construed as authorizing said water district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized thereto herein or by subsequent Act of the Legislature, or as provided in Section 7.

Sec. 4. Authorized to lay pipes, public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways within said district and across private lands therein, and to maintain and replace all such pipes, aqueducts, mains and fixtures as may be necessary, and may excavate through any lands when necessary and convenient for its corporate purposes; and whenever said district shall lay any pipes, aqueducts or mains in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authorized to erect and maintain dams, reservoirs, etc. The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, pumping stations, with all necessary appliances required therefor, reservoirs, standpipes and structures necessary and convenient for its corporate purposes.

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

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

If any person or corporation sustaining damages by any taking as aforesaid and said water district shall not mutually agree upon the sum to be paid therefor, either party, upon petition to the county commissioners of Penobscot County, may have such damages assessed by them; and the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of town ways.

Sec. 7. Procedures in crossing of railroads or utility rights-of-way. In case of any crossing of a railroad or the right-of-way occupied by the transmission or distribution lines of an electric company, unless consent is given by the company owning or operating such railroad or transmission line, as to place, manner and conditions of the crossing, within 30 days after such consent is requested by such district, the Public Utilities Commission shall, upon petition setting forth a description of said premises and the reasons for said crossing, after notice given as said commission may prescribe, determine the place, manner and conditions of such crossing; and all work within the limits of such railroad location or right-of-way shall be done under the supervision and to the satisfaction of such railroad company or electric company, as the case may be, but at the expense of the district, unless otherwise ordered by said Public Utilities Commission, which shall award to said railroad or electric company any damage suffered by it occasioned by said crossing.

Sec. 8. Board of trustees; appointment; compensation. All the affairs of said district shall be managed by a board of trustees composed of 5 members, 3 to be appointed by the municipal officers of the Town of Orono and 2 to be appointed by the municipal officers of the Town of Veazie, within 30 days after the acceptance of this Act by the inhabitants of said district as herein-after provided, but none of the selectmen of either of said towns shall be appointed to the board of trustees. As soon as convenient after the members

of said board have been appointed, said trustees shall hold a meeting in the Town of Orono and organize by the election of a president and clerk, from their own membership, adopt a corporate seal and choose a treasurer and when necessary, all other needful officers and agents, who with the treasurer shall serve at their pleasure and whose compensation shall be fixed by said trustees. Whenever a vacancy occurs in the office of president, clerk or treasurer, it shall be promptly filled by said board of trustees. At the said first meeting they may determine by agreement, or failing to agree, they shall determine by lot, the term of office of each trustee so that one shall retire each year and the term of office of the first trustee shall end at the end of the municipal year of the Town of Orono following the acceptance of this Act, and thereafter, the term of office of a trustee shall expire with the end of each municipal year. Whenever the term of office of a trustee expires, the body which appointed said trustee shall appoint a successor to serve the full term of 5 years, and in case any other vacancy arises from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of the town from which he received his appointment, he vacates the office of trustee. They may also ordain and establish such bylaws as are necessary for their own convenience and the proper management of the affairs of the district. Said trustees may procure an office and incur such expense as may be necessary. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall not be eligible to any office under the board, except that of president and clerk. The trustees, as such, shall receive as compensation for their services an amount to be determined by them not to exceed \$500 each per year; but the treasurer may be allowed such compensation as the trustees shall determine.

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

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

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

Sec. 11. Authority to purchase; right of eminent domain to take property of Penobscot County Water Company. The Orono-Veazie Water District is authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is expressly delegated to said district for said purpose, the entire plant, property, franchises, rights and privileges of the Penobscot County Water Company located in or serving the Towns of Orono and Veazie, except its cash assets, amounts receivable, and its land and office building on Forest Avenue in Orono, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said company, whether the record title thereto is or is not in said Penobscot County Water Company. Said company is authorized to sell, transfer and convey its franchises and property to said water district.

Sec. 12. Procedures for purchase or exercise of right of eminent domain. Before exercising any right of eminent domain conferred under this Act with respect to the property of the Penobscot County Water Company, the district shall make a reasonable effort to acquire said property by purchase. The district shall cause said property to be appraised for the purpose of determining the amount that would constitute just compensation for the taking of said property. The district, its agents, employees or designees, may, upon 30 days' written notice to the Penobscot County Water Company, enter upon the real property of the Penobscot County Water Company, make surveys, examinations, photographs, tests and samplings of the real or personal property of the Penobscot County Water Company for the purpose of appraising said real or personal property. Such entry as aforesaid shall take place during daylight hours. The entry and activities authorized by this section shall not constitute a trespass, but the district shall be liable for physical injury to, and for substantial interference with possessing or use of, property of the Penobscot County Water Company caused by its entry and activities upon the property, which damages may be recovered by complaint in a civil action. The district shall establish the amount which it believes to be just compensation for said property and shall submit to the Penobscot County Water Company a proposed offer to purchase said property for the amount so established. The amount of said offer shall not be less than the district's approved appraisal of the fair market value of said property. Compliance by the district with the foregoing shall be determined to be, and shall constitute, a reasonable effort by the district to acquire said property by purchase.

If, within 60 days of the date the proposed offer to purchase is submitted to the Penobscot County Water Company, the district and the Penobscot County Water Company are unable to reach agreement as to the amount of just compensation, the district through its trustees is authorized and empowered to take said plant, property and franchises as for public use and to record

in the Penobscot County Registry of Deeds a notice of condemnation and taking which shall be in substantially the following form:

NOTICE OF CONDEMNATION AND TAKING

The Orono-Veazie Water District does hereby give notice to all whom it may concern:

That the Orono-Veazie Water District, in accordance with the authority delegated to it by the provisions of this Act, has determined to and does hereby exercise its right of eminent domain to acquire as for public use the entire plant, property, franchises, rights and privileges of the Penobscot County Water Company located in or serving the Towns of Orono and Veazie, except its cash assets and accounts receivable and its land and office building on Forest Avenue in Orono, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, too's and all apparatus and appliances owned by said company, whether the record title thereto is or is not in said Penobscot County Water Company.

This Notice of Condemnation and Taking shall be recorded in the Registry of Deeds of Penobscot County, and a copy shall be sent to the Penobscot County Water Company by registered or certified mail or by personal service as required for service of a summons of a complaint in the Superior Court. A copy shall be sent to any mortgagees, holders of any tax liens or any other encumbrances of record by certified or registered mail.

Dated: ORONO-VEAZIE WATER DISTRICT
BY
Its
Duly Authorized

STATE OF MAINE
COUNTY OF PENOBSCOT, SS:

Date:

Personally appeared the above named
of the Orono-Veazie Water District, and acknowledged the above instrument to be his free act and deed in his said capacity and the free act and deed of the said Orono-Veazie Water District.

Before me,

.....
Justice of the Peace
Notary Public

Upon the recording of the Notice of Condemnation and Taking as aforesaid, a check in the amount determined by the district to be just compensation and a copy of the Notice of Condemnation and Taking shall be served upon the Penobscot County Water Company. Service of the Notice of Condemnation and Taking, together with the check, shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. Acceptance and cashing of the check shall not constitute a waiver of the right of the Penobscot County Water Company to

appeal the district's determination of just compensation. In the event there is a mortgage, tax lien or other encumbrance of record covering any of said property, a copy of the Notice of Condemnation and Taking shall be sent by the district by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the office or place of abode of the holder, if known; otherwise to the office or place of abode of the holder as set forth in said record.

The date of the recording of the Notice of Condemnation and Taking shall be the date of taking and the recording of the Notice of Condemnation and Taking shall vest title to the property therein described in the district.

Within 30 days of the date of the recording of the Notice of Condemnation and Taking, the Penobscot County Water Company shall file in the clerk's office of the Superior Court of the County of Penobscot and serve a copy upon the district, so far as they relate to the water service provided in the Towns of Orono and Veazie, the following: First, schedule showing the names, residences and water service of all of its customers with the rate charged therefor; 2nd, copies of all contracts in force; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to the first day of the month preceding the recording of the Notice of Condemnation and Taking 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 interests therein, owned or controlled by the company, 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 and lengths, and specifying the streets, roads or ways where situated; and 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water.

If the company fails or refuses to file the required information, as aforesaid, within said 30-day period, a Justice of the Superior Court, on complaint by the district, shall order the company to file such information and shall make such decree as he deems reasonable and appropriate to enforce said order.

In the event that the Penobscot County Water Company deems itself aggrieved by the district's determination of just compensation and tender thereof, as aforesaid, it may appeal to the Superior Court for Penobscot County within 30 days after the date of the receipt of the Notice of Condemnation and Taking and the tendered compensation. Such appeal shall be taken by filing a complaint setting forth substantially the facts upon which the appeal is based. The Penobscot County Water Company shall serve notice of such appeal upon the district by sending, by registered or certified mail within the time above limited, a true copy of said complaint to the district.

The court shall determine the amount of just compensation by a verdict of its jury, or, if the parties agree, by the court without a jury, or by a referee or referees, and shall render judgment for just compensation, with interest at the legal rate where such is due, and for costs in favor of the party entitled thereto.

If the Penobscot County Water Company has cashed the check tendered to it by the district and the final judgment is less than the amount of the tendered check, then the court shall order the Penobscot County Water Company to pay to the district the excess of the compensation tendered by the district, including interest on the excess at the legal rate from the date of tender, and to pay costs from the time of appeal. Execution shall issue on such judgment.

If the final judgment, exclusive of interest, is not less than the compensation tendered by the district, exclusive of any interest allowed, then the court shall order the district to pay to the Penobscot County Water Company the amount by which the final judgment is in excess of the compensation tendered by the district, and for interest on such excess from the date of taking, at the legal rate, and to pay costs from the time of appeal. No interest shall be allowed to the Penobscot County Water Company on any amount paid or tendered to it by the district. Execution shall issue on such judgment.

Sec. 13. Property tax exempt. The property of said district shall be exempt from all taxation in the Towns of Orono and Veazie and in any other towns where any part of its plant may be located.

Sec. 14. Water rates. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them; and the rates for water so supplied shall be uniform within the territory supplied by the district whenever the installation and maintenance of mains and the cost of service is substantially uniform, but nothing in this Act shall preclude said district from establishing higher rates than the regular rates in sections where for any reason the cost of construction and maintenance or the cost of service exceeds the average, but such higher rates shall be uniform throughout the sections where they apply. Said rates shall be so established as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the water system.
2. To provide for the payment of the interest on the indebtedness created or assumed by the district.
3. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold.
4. If any surplus remains at the end of the year, it may be transferred to the sinking fund.

Sec. 15. Incidental rights and privileges. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the municipal corporation hereby created.

Sec. 16. Acceptance subject to referendum. Unless accepted and approved by a majority vote of the legal voters within said proposed water district voting at an election called and held for the purpose by the municipal officers of the Towns of Orono and Veazie, on the 2nd Tuesday of June, 1976, this Act shall forthwith become inoperative. The registrars of voters in Orono and Veazie shall be in session the 3 secular days next preceding said election for the purpose of revising the voting lists. The subject matter of this Act shall be reduced to the following question: "Shall 'An Act Concerning the Charter of the Orono-Veazie Water 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. The result shall be declared by the muffinicipal officers of each town and due certificates thereof filed by the town clerks with the Secretary of State. This Act shall take effect for all the purposes thereof immediately upon its acceptance by a majority of the legal voters in both Orono and Veazie voting at said election; provided that the total number of votes cast for and against the acceptance of this Act in each of said towns equals or exceeds 20% of the total vote for all candidates for Governor in said towns at the next previous gubernatorial election; but failure of approval by the necessary percentages of voters at any such election in either or both said towns shall not prevent a subsequent election or elections to be held for said purpose within the time limitation of section 18.

Sec. 17. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of the Maine Revised Statutes, Title 35, and all acts amendatory thereof or additional thereto.

Sec. 18. Certain sections inoperative on failure to acquire Penobscot County Water Company plant. If said water district shall fail to purchase the plant, property, franchises, rights and privileges owned by the Penobscot County Water Company and used or usable in supplying water to the Towns of Orono and Veazie or shall fail to file a petition before November 1, 1978, to exercise its right of eminent domain as in this Act provided, for the acquisition of said plant, property, franchise, rights and privileges owned by the Penobscot County Water Company and used or usable in supplying water to the Towns of Orono and Veazie, then this Act shall be inoperative, null and void.

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

Sec. 20. Prior act of incorporation void on effective date. Upon the effective date of this Act, the Orono-Veazie Water District created by P.&S.L. 1971, c. 67, is declared to be inoperative, null and void.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This bill repeals and replaces the charter of the Orono-Veazie Water District, with certain changes, especially to section 12. Section 12, as enacted by P.&S.L. 1971, c. 67, was recently ruled unconstitutional, an unconstitutionality which may have permeated the entire Act. This bill, which changes section 12 to make it constitutional, also repeals and replaces the rest of the charter, with minor changes, in order to avoid any possible constitutional problems caused by section 12 in its previous form with the rest of the charter.