

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1650

H. P. 1457

House of Representatives, May 31, 1979

The Committee on Public Utilities suggested and ordered printed.

(Approved for introduction by a Majority of the Legislature pursuant to Joint Rule 27)

EDWIN H. PERT, Clerk

Presented by Mr. Carroll of Limerick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Creating the Cornish 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 present water system owned by the Cornish 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 Cornish; 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 17, the inhabitants and territory of the Town of Cornish in the County of York shall constitute a body politic and corporate under the name of "Cornish Water District" for the purpose of supplying the Town of Cornish and the

inhabitants and others of the district, with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes.

Sec. 2. Powers of Cornish Water District. The Cornish Water District is authorized for the purposes of its incorporation to take, collect, store, flow, use, divert, distribute and convey to the 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 Cornish and from any other source from which the Cornish Water Company is now authorized to take water. 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 set forth in this Act are granted to the district created by this Act.

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, highways and bridges in the Town of Cornish 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 the 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. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities. The 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. The 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; to supply water to any public utility now supplying water in the County of York, subject to the consent of the Public Utilities Commission.

Sec. 5. Rights of eminent domain. The 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 of water rights necessary for erecting and

maintaining dams, plants and works, for flowage, power, pumping, supplying water through its mains, for reservoirs, preserving the purity of the water and watershed, 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 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 contained in this section shall be construed as authorizing the 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 of that property or facilities in the performance of a public duty, unless expressly authorized to do so by this section or by subsequent Act of the Legislature, or as provided in section 6.

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 the public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by the district, the Public Utilities Commission, upon petition by the district, shall determine the place, manner and conditions of the crossing, and all work on the property of the public utility shall be done under the supervision and to the satisfaction of the public utility, or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 7. Procedure in exercising of eminent domain. After the original acquisition for which provision is made in section 12, the 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. The 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 purposes of the district as set out in the application, 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 the 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, that 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 survey's the district being responsible for any damage resulting from that entry, the 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 York County of such certificate as provided in this section. Title to that property shall not vest in the district until payment therefor has been made.

Sec. 8. Adjustment of damages; procedure as in laying out of highways. If any person sustaining damages by any taking pursuant to the right of eminent domain shall not agree with the district upon the sum to be paid therefor, either party, upon petition to the county commissioners of York County, may have the 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. 9. Trustees; how elected; first board; meeting; officers. All of the affairs of the 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 Cornish, who are especially appointed for this purpose, shall give notice of a special election of the Cornish 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 Cornish. The candidates for office shall obtain nomination papers from the clerk of the Town of Cornish, 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 first 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 the 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 the 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 the 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. The 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 the district; one of the signers to each separate paper shall swear to the truth thereof and the certificate of the oath shall be annexed to or made under the nomination papers. The nomination papers shall be filed with the clerk of the district at least 7 days, exclusive of Sundays, previous to the day of the election. With the 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 provisions of this section 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 this section shall die before the day of election, or shall withdraw in writing, the vacancy may be supplied in the manner provided in this section for 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 the 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 Cornish 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 the names on the 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 the name or names in the blank spaces left therefor by writing the name therein. Where the voter so adds by writing in the new name or names, his vote for the 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 the election shall be declared by the 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, the trustees shall forthwith hold a meeting to elect officers as provided in this section. 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 the 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 the district, and upon nomination made as provided in this section for the election of trustees; and for the purpose of 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 the 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 provided in this section. All trustees shall be eligible to reelection, but no person holding the office of selectman or road commissioner in the Town of Cornish shall be eligible to nomination or election as trustee. The 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 the board, but the compensation shall not exceed \$200 per year.

The trustees shall appoint a registrar of voters for the district who may also be the registrar of voters for the Town of Cornish and fix his salary. It shall be the registrar's duty to make and keep a complete list of all the eligible voters of the 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 the 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 the water district are entitled to vote thereunder.

Sec. 10. Annual report. The trustees shall make and publish an annual report, including a report of the treasurer and the report may be included in, and published as part of, the annual town report of the Town of Cornish.

Sec. 11. District and towns authorized to make and assume contracts. The district, through its trustees, is authorized to contract with persons and corporations, including the Town of Cornish, and the Town of Cornish is authorized to contract with it, for the supply of water for municipal purposes.

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

Sec. 12. Authorized to acquire property and franchises of Cornish Water Company. The district, through its trustees, is hereby authorized to acquire by purchase all of the entire plant, properties, franchises, rights and privileges owned by Cornish Water Company located within the Town of Cornish, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the district. The 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 the district for that purpose, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by Cornish 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 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 the Cornish Water Company.

Sec. 13. 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 the purposes, the 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 Cornish, the district being authorized to reimburse the Town of Cornish 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. The 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.

The 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 "Cornish 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, Title 30, section 5053, and all provisions of that 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 the district shall be legal investments for savings banks in the State of Maine, and shall be free from taxation.

Sec. 14. Property tax exempt. The property, both real and personal, rights and franchises of the district shall be forever exempt from taxation in the Town of Cornish.

Sec. 15. Rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private or public, shall pay to the treasurer of the district the rates established by the board of trustees for the services used by them, and the 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.

The 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 7% 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 the 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; and

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

Sec. 16. Existing statutes not affected; rights conferred subject to provisions of law. Nothing contained in this Act 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 Title 35, and all acts amendatory thereof and additional thereto, to the extent that Title 35 and the amendments thereto affect the operations of the district.

Sec. 17. Act void unless property and franchise of Cornish Water Company is acquired. If the district, pursuant to the provisions of this Act, shall fail to purchase or file its petition to take by eminent domain, as provided in section 7, within one year from the date of the first meeting of the board of trustees, the plant, properties, franchises, rights and privileges owned by Cornish Water Company and used or usable in supplying water to a part of the Town of Cornish, 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 Cornish, which meeting shall be called and held within 30 days of the effective date of this Act. The 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 Cornish shall prepare a list of the eligible voters of the Town of Cornish who live within the area of the district. This list shall become the legal list to be used at the 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 Cornish, who shall be in session on the day preceding the special election to hear and determine such claims. After the list is complete, the registrar of voters of Cornish shall compute the total number of eligible voters on the list and certify the list and the total to the municipal officers of Cornish so that it will be available on the date of the special election.

The town clerk of Cornish shall prepare the required ballots. He shall reduce the subject matter of this Act to the following question: "Shall the Act creating the Cornish Water District 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 the district shall be declared by the municipal officers of the Town of Cornish and due certificate thereof filed by the town clerk of Cornish with the Secretary of State and if the 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 Cornish.

Failure of approval of this Act at the 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 Cornish are vested with authority as provided in this Act.

STATEMENT OF FACT

The purpose of this bill is to create the Cornish Water District.