

MAINE STATE LEGISLATURE

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EIGHTY-SECOND LEGISLATURE

H. P. No. 633

H. D. No. 148

House of Representatives, Feb. 13, 1925.

Referred to Committee on Public Utilities and 500 copies ordered printed. Sent up for Concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Lait of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-FIVE

AN ACT to Incorporate the Old Town Water District.

Be it enacted by the People of the State of Maine, as follows:

Section 1. *Territorial Limits; Corporate Name; Purposes.*

2 The following territory and the people therein namely: So
3 much of the City of Old Town as lies on Marsh's Island
4 and on Treat and Webster's Island; together with so much
5 of the Stillwater portion so-called, as is included within
6 School District No. 3, as laid down on Lore Alfred's map
7 of said city, published by E. M. Woodford in 1855 and more
8 particularly described as follows: beginning at the westerly
9 shore of the Stillwater Branch of Penobscot River, where
10 said shore is intersected by the northeasterly line of the town

11 of Orono; thence northwestward, by and along said north-
12 erly line of Orono, to the southerly line of Lot 2 in the
13 South Division of the Barker Tract in said Old Town;
14 thence eastward, by and along the southerly lines of said
15 Lot 2 of Lot 1 in said South Division, to the southeast
16 corner of said Lot 1; thence northward, by and along the
17 easterly line of said Lot 1, to where said easterly line is
18 intersected by the southerly line of Lot 7 in the River Di-
19 vision of said Barker Tract; thence eastward, by and along
20 said southerly line of Lot 7, to the shore of the Stillwater
21 Branch aforesaid; thence southerly, by and along said shore,
22 to the point of beginning; shall constitute a body politic and
23 corporate under the name of Old Town Water District, for
24 the purpose of supplying the inhabitants of the City of Old
25 Town and the town of Milford with pure water for domestic,
26 sanitary and municipal purposes.

Sect. 2. *Authorized to Take; Hold and Distribute Water.*

2 The said district for effecting and carrying out the purposes
3 of its incorporation, is hereby authorized to take, hold, divert,
4 use and distribute water from the Penobscot River.

Sect. 3. *Authorized to Take and Hold Lands and Water
2 Rights; Right of Eminent Domain Conferred.* The said
3 district, for the purposes of its incorporation is hereby au-
4 thorized to take and hold, as for public uses, by purchase or
5 otherwise, any land or interest therein or water rights neces-
6 sary for erecting and maintaining dams, for flowage, for
7 power for pumping its water supply through its mains, for

8 reservoirs, for preserving the purity of the water and water
9 shed, for laying and maintaining aqueducts and other struc-
10 tures for taking, distributing and disposing of water and for
11 rights of way or roadways to its sources of supply, dams,
12 power stations, reservoirs, mains, aqueducts, structures and
13 lands.

Sect. 4. *Authorized to Lay and Maintain Pipes; etc.* The
2 said district is hereby authorized to lay in and through the
3 streets, roads, ways and highways of the said City of Old
4 Town and town of Milford and across private lands therein,
5 and to maintain, repair and replace all such pipes, aqueducts
6 and fixtures as may be necessary and convenient for its
7 corporate purposes, and whenever said district shall lay any
8 pipes or aqueducts in any street, roadway or highway it
9 shall cause the same to be done with as little obstruction as
10 practicable to the public travel, and shall at its own expense,
11 without unnecessary delay, cause the earth and pavement
12 removed by it to be replaced in proper condition.

Sect. 5. *Procedure in Exercising Right of Eminent Do-*
2 *main.* In exercising any right of eminent domain conferred
3 upon it by law, the said district shall file in the office of the
4 county commissioners, of the county where such lands or
5 water rights are situated, and record in the registry of deeds
6 in said county, plans of the location of all lands or interest
7 therein or water rights, to be taken, with an appropriate
8 description and the name of the owners thereof, if known.
9 When for any reason the district fails to acquire the prop-

erty 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 is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any 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 ten days shall have elapsed after the date of such filing, whereupon possession may be had of all said lands or interests therein or water rights so taken, but title thereto shall not vest in said district until payment therefor.

Sect. 6. *How Damages Assessed in Cases of Disagreement.* If any person sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of the county where said lands or water rights are situated, may have said damages assessed by them; the procedure and all subsequent proceedings and rights of appeal thereon shall be had under the same restriction, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sect. 7. *Procedure as to Crossing of Railroads.* In case of any crossing of railroad, unless consent is given by the

3 company owning or operating such railroad, as to place,
4 manner and conditions of the crossing, within thirty days
5 after such consent is requested by such district, the Public
6 Utilities Commission shall, upon petition setting forth a de-
7 scription of said premises and the reasons for said crossing
8 after notice given as said commission may prescribe, deter-
9 mine the place, manner and conditions of such crossing, and
10 all work within the limits of such railroad location shall be
11 done under the supervision of the railroad company and to
12 the satisfaction of the Public Utilities Commission, but at
13 the expense of said Water District unless otherwise ordered
14 by said Public Utilities Commission.

Sect. 8. *Trustees; Terms of Office and Compensation;*
2 *Organization of Board; Vacancies; Annual Report.* All
3 the affairs of said water district shall be managed by a board
4 of trustees composed of three members to be chosen by
5 the municipal officers of the City of Old Town, but no
6 member of the city council shall during the term for which
7 he is elected be chosen one of said board of trustees. As
8 soon as convenient after the members of said board have
9 been chosen, said trustees shall hold a meeting at the alder-
10 men's room in the City of Old Town and organize by the
11 election of a president and clerk, adopt a corporate seal
12 and when necessary choose a treasurer and all other needful
13 officers and agents for the proper conduct and management
14 of the affairs of said district. At said first meeting they
15 shall determine by lot the term of office of each trustee so

16 that one shall serve for one year, one for two years and
17 one for three years, and whenever the term of office of a
18 trustee expires, his successor shall be appointed by the mu-
19 nicipal officers of the City of Old Town to serve for the
20 full term of three years, and in case any other vacancy
21 arises it shall be filled in like manner for the unexpired
22 term. The term of office of the trustees shall begin on the
23 first Monday in April, and the term of office of the trustees
24 first chosen shall be considered to date from the first Mon-
25 day of April next prior to their election. All trustees shall
26 be eligible to reappointment. They may also ordain and
27 establish such by-laws not inconsistent with the laws of the
28 state as are necessary for their own convenience and the
29 proper management of the affairs of said district. Said
30 trustees may have the use of the municipal offices of the
31 City of Old Town for the transaction of their business.
32 Each member shall receive in full compensation for his
33 services an allowance of one hundred dollars per annum,
34 or such other sum as may be approved by the municipal
35 officers of the City of Old Town. At the close of each
36 fiscal year the trustees shall make a detailed report of their
37 doings, of the receipts and expenditures of said water dis-
38 trict, of its financial and physical condition, and of such
39 other matters and things pertaining to said district as shall
40 show the inhabitants of said district how said trustees are
41 fulfilling the duties and obligations of their trust. Such
42 reports shall be made and filed with the municipal officers

43 of the City of Old Town on or before March first of each
44 year.

Sect. 9. *May Take Over Plant of Penobscot County
2 Water Company.* Said water district is hereby authorized
3 and empowered to acquire by purchase or by the exercise
4 of the right of eminent domain, which right is hereby ex-
5 pressly delegated to said district for said purpose, the en-
6 tire plant, properties, franchises, rights and privileges, ex-
7 cept cash assets and accounts receivable, owned by the Pe-
8 nobscot County Water Company, situate in the City of Old
9 Town and the town of Milford, including all lands, waters,
10 water-rights, dams, structures, reservoirs, pipes, machinery,
11 fixtures, hydrants, tools and all apparatus and appliances
12 used or usable in supplying water in the City of Old Town
13 and town of Milford.

Sect. 10. *Procedure in Case Purchase Price of System of
2 Penobscot County Water Company Cannot Be Agreed
3 Upon.* In case said trustees fail to agree with said Penob-
4 scot County Water Company upon the terms of purchase of
5 the above mentioned property, within three months after
6 the acceptance of this charter by the inhabitants of said
7 district as hereinafter set forth, said district, through its
8 trustees aforesaid, is hereby authorized to take said plant,
9 property, and franchises, as for public use by petition there-
10 for in the manner hereinafter provided. And said water
11 district, through its trustees, is hereby authorized at any
12 time after three months from the date of the acceptance of

13 this charter, as aforesaid, and not later than one year there-
14 after, to file a petition in the clerk's office of the supreme
15 judicial court for the County of Penobscot, in term time or
16 in vacation, addressed to any justice of said court, who,
17 after due notice to said Penobscot County Water Company
18 and its mortgagees, shall, after hearing and within thirty
19 days after the filing of said petition, appoint three disin-
20 terested appraisers, none of whom shall be residents of the
21 City of Old Town or town of Milford, for the purpose of
22 fixing the valuation of said plant, property and franchises.
23 At the hearing aforesaid, such justice, upon motion of the
24 petitioner, may order the production and filing in court, for
25 the inspection of the petitioner, of all books and papers
26 pertinent to the issue and necessary for a full understanding
27 of the matter to be heard by said appraisers, the terms and
28 conditions of so producing and filing such books and papers
29 to be determined by the justice in his order therefor and to
30 be enforced from time to time as any justice of the supreme
31 judicial court, in term time or in vacation, upon motion of
32 either party, may deem reasonable and proper in the prem-
33 ises. At such hearing, such justice upon motion of the
34 petitioner, may fix a time at which the said water company
35 shall file in the clerk's office of the supreme judicial court
36 for the county of Penobscot, for the inspection of the peti-
37 tioner, so far as they relate to the service in the City of
38 Old Town and the town of Milford, the following: First,
39 schedules showing the names, residences and water service

40 of all its customers on the first day of January in the year
41 nineteen hundred and twenty-six, with the rate charged
42 therefor; second, copies of all contracts in force on said first
43 day of January; third, an itemized statement of the gross
44 income earned during its last complete fiscal year and up to
45 said January first, and all operating expenses and fixed
46 charges, paid or incurred during such period and properly
47 chargeable thereto; fourth, a memorandum of all real es-
48 tate, water rights, or interests therein, owned or controlled
49 on said first day of January, with such brief description
50 thereof as will reasonably identify the same; fifth, brief
51 descriptions, specifications and plans of all reservoirs, mains,
52 pipes, service pipes, hydrants, gates, gate boxes, shut-off
53 boxes, fixtures and machinery and all the physical elements
54 in such water system, giving in detail quantities, sizes,
55 lengths, and specifying the streets, roads, or ways where
56 situated; sixth, an itemized list of all tools, apparatus, ap-
57 pliances and supplies used or usable in supplying water on
58 said first day of January. Such orders may be enforced
59 from time to time by any justice of said supreme judicial
60 court, in term time or in vacation, upon motion of either
61 party, as such justice may deem reasonable and proper in
62 the premises. At such hearing the justice then sitting may,
63 upon motion of the petitioner, make all such decrees as he
64 deems reasonable and proper to enable the petitioner, through
65 its servants and employees, to ascertain the true condition
66 of the mains and pipes of the said water company, extern-

67 ally or internally, in the presence of the officers or agents
68 of said water company, the entire expense thereof to be
69 borne by said water district. The said appraisers shall have
70 the power of compelling attendance of witnesses and the
71 production of all books, accounts and papers pertinent to
72 the issue and necessary for a full understanding by them
73 of the matter in question and may administer oaths; and
74 any witness or person in charge of such books, accounts
75 and papers refusing to attend or to produce the same shall
76 be subject to the same penalties and proceedings, so far as
77 applicable, as witnesses summoned to attend the supreme
78 judicial court. Depositions may be taken as in civil actions.
79 The appraisers so appointed shall, after notice and hearing,
80 fix the valuation of said plant, property and franchises at
81 what they are fairly and equitably worth, so that said water
82 company shall receive just compensation for all the same.
83 The first day of January, nineteen hundred and twenty-six,
84 shall be the date as of which the valuation aforesaid shall
85 be fixed, from which date interest on said award shall run,
86 and all rents and profits accruing thereafter shall belong
87 to said water district. The report of said appraisers, or a
88 majority of them, shall be filed in said clerk's office, in term
89 time or in vacation, as soon as may be after their appoint-
90 ment, and such single justice, or, in case of his inability to
91 act, any justice of said court appointed by the chief justice,
92 may, after notice and hearing, confirm or reject the same,
93 or recommit it if justice so requires. Before a commission

94 is issued to said appraisers either party may ask for instruc-
95 tions to said appraisers, and all questions of law arising
96 upon said requests for instructions, or upon any other mat-
97 ters in issue, may be reported to the law court for deter-
98 mination before the appraisers proceed to fix the valuation
99 of the property, plant and franchises of said company.
100 Upon the confirmation of said report the court so sitting
101 shall thereupon, after hearing, make final decree upon the
102 entire matter, including the application of the purchase
103 money and transfer of property, jurisdiction over which
104 is hereby conferred, and with the power to enforce said
105 decree as in equity cases. All findings of fact by said
106 court shall be final, but any party aggrieved may take ex-
107 ceptions as to any ruling of law so made, the same to be
108 accompanied by so much of the case as may be necessary
109 to a clear understanding of the questions raised thereby.
110 Such exceptions shall be claimed on the docket within ten
111 days after such final decree is signed, entered and filed
112 and notice thereof has been given to the parties or their
113 counsel, and said exceptions so claimed shall be made up,
114 allowed and filed within said time unless further time is
115 granted by the court, or by agreement of the parties. They
116 shall be entered at the next term of the law court to be
117 held after the filing and entry of said decree and there
118 heard unless otherwise agreed; or the law court for good
119 cause shall order further time for hearing thereon. Be-
120 fore said plant, property and franchises are transferred in

121 accordance with such final decree and before payment
122 therefor, as hereinbefore provided, such justice shall, upon
123 motion of either party, after notice and hearing, take ac-
124 count of all receipts and expenditures properly had or in-
125 curred by the Penobscot County Water Company, belonging
126 to this period, from and after said first day of January,
127 and all net rents and profits accruing thereafter, and shall
128 order the net balance to be added to, or deducted from, the
129 amount to be paid under such final decree, as the case
130 may be. All findings of law and fact by such justice at
131 such hearing shall be final. On payment or tender by said
132 district of the amount so determined and the performance
133 of all the other terms and conditions so imposed by said
134 court, the entire plant, property and franchises of Penob-
135 scot County Water Company used and usable in supply-
136 ing water in the City of Old Town and town of Milford
137 shall become vested in said water district.

Sect. 11. *Contracts of Existing Water Company to be*
2 *Assumed by District.* All valid contracts now existing be-
3 tween the Penobscot County Water Company and any
4 persons or corporations for supplying water in the City of
5 Old Town and town of Milford shall be assumed and car-
6 ried out by said Old Town Water District.

Sect. 12. *Bond Issue Authorized.* For accomplishing the
2 purposes of this act, said water district, through its trustees,
3 is authorized to borrow money temporarily, and to issue
4 therefor the interest-bearing negotiable notes of the district,

5 and for the purpose of refunding the indebtedness so cre-
6 ated, of paying any necessary expenses and liabilities in-
7 curred under the provisions of this act, including the ex-
8 penses incurred in the creation of the district, in acquiring
9 the aforesaid properties and franchises of the Penobscot
10 County Water Company, by purchase or otherwise, of se-
11 curing sources of supply, taking water and land, paying
12 damages, laying pipes, constructing, maintaining and oper-
13 ating a water-plant, and making extensions, additions and
14 improvements to the same, the said water district, through
15 its trustees, may from time to time issue bonds of the dis-
16 trict to an amount necessary in the judgment of the trustees
17 therefor. Said notes and bonds shall be legal obligations of
18 said water district, which is hereby declared to be a quasi
19 municipal corporation within the meaning of section one
20 hundred five of chapter fifty-one of the revised statutes,
21 and all the provisions of said section shall be applicable
22 thereto. The said notes and bonds shall be legal investments
23 for savings banks.

Sect. 13. *Property Exempt from Taxation.* The prop-
2 erty of said district shall be exempt from all taxation in the
3 City of Old Town and town of Milford and in any other
4 towns where any part of its plant may be located.

Sect. 14. *Rates; Application of Revenues; Sinking Fund;*
2 *Surplus.* All individuals, firms and corporations, whether
3 private, public or municipal, shall pay to the treasurer of
4 said district the rates established by said board of trustees

5 for the water used by them, and said rates shall be uniform
6 within the territory supplied by the district and subject to
7 approval of the Public Utilities Commission. Said rates
8 shall be so established as to provide revenue for the fol-
9 lowing purposes:

1. To pay the current expenses for operating and main-
2 taining the water system, and provide for such extensions
3 and renewals as may become necessary.

2. To provide for the payment of the interest on the in-
2 debtedness created by the district.

3. To provide each year a sum equal to not less than one
2 per centum nor more than five per centum of the entire
3 indebtedness created by the district, which sum shall be
4 turned into a sinking fund and there kept to provide for the
5 extinguishment of said indebtedness. The money set aside
6 for the sinking fund shall be devoted to the retirement of
7 the obligations of the district or invested in such securities
8 as savings banks are allowed to hold. Provided, however,
9 that the trustees may, in their discretion and in lieu of the
10 establishment of a sinking fund, issue the bonds of the
11 district so that not less than one per centum of the amount
12 of the bonds so issued shall mature and be retired each year.

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

Sect. 15. *Incidental Powers Granted.* All incidental
2 powers, rights and privileges necessary to the accomplish-

3 ment of the main object herein set forth are granted to the
4 corporation hereby created.

Sect. 16. *Local Referendum Provided For.* This act
2 shall take effect when approved by a majority vote of the
3 legal voters within said district, voting at an election speci-
4 ally called and held for the purpose, by the municipal offi-
5 cers of the City of Old Town, to be held at the voting places
6 in each ward in said city; the date of holding said election
7 to be determined by said municipal officers. The board of
8 registration shall prepare and furnish separate check lists
9 for the several wards for such of the voters within said
10 district as are then legal voters of said city and reside in
11 that part of said several wards which is embraced in said
12 district, and all notices, warrants or other proceedings shall
13 be varied accordingly so as to show that only such voters
14 as reside in said district as aforesaid are entitled to vote
15 upon the above question. Such special election shall be
16 called, advertised and conducted according to the law re-
17 lating to municipal elections; provided, however, that the
18 board of registration shall not be required to prepare nor
19 the city clerk to post a new list of voters; and for this
20 purpose said board of registration shall be in session on
21 the three secular days next preceding said election, the first
22 two days thereof to be devoted to registration of voters and
23 the last day to enable the board to verify the corrections of
24 said list and to complete and close up its records of said
25 sessions. The city clerk shall reduce the subject of this

26 act to the following question: "Shall the act to incorporate
27 the Old Town Water District be accepted?" and the voters
28 shall indicate by a cross placed against the words "yes" or
29 "no" their opinion of the same. The result shall be declared
30 by the mayor and aldermen and due certificate thereof filed
31 with the secretary of state by the clerk of said city.

Sect. 17. *Sections 2-7 Inoperative Unless District Ac-*
quires by Purchase, or Petitions for Exercise of Right of
Eminent Domain, Plant of Private Owner. Sections, two,
4 three, four, five, six and seven of this act shall be inopera-
5 tive, null and void, unless said water district shall first ac-
6 quire by purchase, or by the exercise of the right of eminent
7 domain, as in this act provided, the plant, properties, fran-
8 chises, rights and privileges owned by the Penobscot County
9 Water Company and used or usable in supplying water in
10 the City of Old Town and town of Milford.

Sect. 18. *Act to Take Effect for Purposes of Election* 90
2 Days After Adjournment of Legislature. This act shall
3 take effect in ninety days after the final adjournment of the
4 legislature, so far as necessary to empower the calling and
5 holding of the special election authorized in section sixteen
6 herein