

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 298

H. P. 860

House of Representatives, Jan. 31, 1935.

Referred to Committee on Legal Affairs and 500 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Tupper of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

AN ACT to Incorporate the Calais Water District.

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

Sec. 1. Territorial limits; name; purposes; plans of system to be submitted to public utilities commission for approval. That part of the city of Calais, Maine, and the inhabitants within the same, which is bounded and described as follows: Commencing at a point on the westerly bank of the Saint Croix river in said Calais, Maine, where the dividing line between lots No. 25 and No. 26 (according to B. R. Jones' plan of Calais) strikes said river; thence southwesterly by said dividing line 1 mile to the northwesterly corner of said lot No. 25; thence northwesterly about $\frac{3}{4}$ of a mile to the northeasterly corner of lot No. 43, which is also the easterly corner of lot No. 8 of the Milltown small lots; thence southwesterly by the dividing line between lot No. 43 and small lots No. 8 and No. 12, and a continuation thereof to the easterly bank of the river Saint Croix; thence northerly, easterly and southeasterly by the river bank to the place of beginning; said lot as above described is hereby created a body politic and corporate by the name of Calais Water District for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, commercial and municipal purposes.

Provided, however, that it shall not construct any system of pipe lines or development, without first having submitted its plans to the public

utilities commission, and obtained its approval therefor in writing, under power vested in said commission by chapter 98 of the public laws of 1917.

Sec. 2. May use certain waters. The said district for the purpose of its incorporation is hereby authorized to take, hold, divert, use and distribute water from West Maguerrowock or Howard lake, and from any surface or underground brook, spring or vein of water in said city of Calais.

Sec. 3. May exercise eminent domain. The said district for the purposes of its incorporation, is hereby authorized, to take and hold as for public uses, by purchase or otherwise, any land or interest therein, or water rights necessary for erecting and maintaining dams, for flowage, for power for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and water shed, for laying and maintaining aqueducts and other structures for taking, distributing and 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 said district is hereby authorized to lay in and through its streets, roads, ways and highways of the district named in section 1 and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts, and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

The said 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.

Sec. 4. Procedure. In exercising any right of eminent domain conferred upon it by law, from time to time, or any rights of eminent domain through or under the franchises of any water company by it acquired, the said district shall file in the office of the county commissioners of Washington county and record in the registry of deeds in said county plans of the location of all lands or interest therein or water rights, to be taken, with an appropriate description and the names of the owners thereof, if known. 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 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 the expiration of 10 days from such filing, whereon 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.

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 Washington county, may have said damages assessed by them, 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 highways.

Sec. 5. Procedure if railroad must be crossed. In case of any crossing of a railroad, unless consent is given by the company owning or operating such railroad as to place, manner and conditions of the crossing, within 30 days after such consent is requested by said district, the public utility commission shall determine the place, manner and conditions of such crossing; and all work within the limits of such railroad location shall be done under the supervision and to the satisfaction of such railroad company, but at the expense of the district.

Sec. 6. Board of trustees. All the affairs of said district shall be managed by a board of trustees composed of three members, to be chosen by the municipal officers of Calais, within 30 days after the acceptance of this act by the inhabitants of said water district as hereinafter provided, but no member of the city council shall, during the term for which he is elected, be chosen one of said board of trustees. As soon as convenient after the members of said board have been chosen, said trustees shall hold a meeting in the city building in Calais, and organize by the election of a president and clerk, adopt a corporate seal, and when necessary may choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. At first said meeting, they shall determine by lot the term of office of each trustee so that 1 shall serve for 1 year, 1 for 2 years and 1 for 3 years; and 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 3 years, and in case any other vacancy arises it shall be filled in like manner for the unexpired term. They may also ordain and establish such by-laws 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. Each member shall receive such compensation as said municipal officers may determine.

Sec. 7. District and city authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations including the city of Calais, and said city of Calais is authorized to contract with it, for the supply of water for municipal purposes. Said district is further authorized to contract with the board of water commissioners of the town of St. Stephen, a municipal corporation in the county of Charlotte and province of New Brunswick, for the supply of water for all purposes for which it is authorized to render service, or to contract for any other available supply of water with any individual, person or corporation either within or without the state of Maine.

Sec. 8. Authorized to acquire property and franchises of Calais Water & Power Company. Said water district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, property, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Calais Water & Power Company, situate in said city of Calais, including all land, waters, water-rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the city of Calais. Said district is hereby further authorized and empowered to acquire, purchase and to own real estate and property of every name or nature in the town of Milltown, a municipal corporation in the county of Charlotte and province of New Brunswick, aforesaid, or to acquire and own the capital stock of any corporation engaged in the business of supplying water within the corporate limits of said town of Milltown, and, when and if acquired and owned, to manage and continue the business of said corporation.

Sec. 9. Procedure in case trustees and water district fail to agree on terms of purchase. In case said trustees fail to agree with said Calais Water & Power Company upon the terms of purchase of the above mentioned property, said district through its trustees aforesaid, is hereby

authorized to take said plant, property and franchises as for public use by petition therefor in the manner hereinafter provided. And said water 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, in term time or in vacation, addressed to any justice of said court, who after due notice to said Calais Water & Power Company, shall, after hearing and within 30 days after the filing of said petition, appoint 3 disinterested appraisers from names submitted, 3 by the city of Calais, and 3 by the Calais Water & Power Company, none of whom shall be residents of Washington county, for the purpose of fixing the valuation of said plant, property and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of the superior court, in court time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice, upon motion of the petitioner, may fix a time at which the said water company shall file in the clerk's office of the superior court for the county of Washington for the inspection of the petitioner, so far as they relate to the service in the city of Calais, Maine, the following: 1st, schedules showing the names, residences and water service of all 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 all operating expenses and fixed charges paid or incurred during such period and properly chargeable thereto; 4th, a memorandum of all real estate, water rights or interest therein owned or controlled, with such brief description thereof as will reasonably identify the same; 5th, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, shut-off boxes, fixtures and machinery and all the physical elements in such water system, giving in detail quantities, sizes, lengths, and specifying the streets, roads, or way where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water. Such orders may be enforced from time to time by any justice of said superior court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain

the true condition of the mains and pipes of the said water company, externally or internally, in the presence of the officers or the agents of said water company, the entire expense thereof to be borne by said water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the superior court. Depositions may be taken as in civil actions. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive just compensation for all and the same. The 1st day of January, 1937, shall be the date as of which the valuation aforesaid shall be fixed, unless by mutual agreement a different date may be determined, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or a majority of them, shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or in case of his inability, to act, any justice of said court appointed by the chief justice may, after notice and hearing, confirm or reject the same, or recommit it as justice so requires. Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before the appraisers proceed to fix the valuation of the property, plant and franchises of said company. Upon the confirmation of said report the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which **is hereby conferred**, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such 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 to the parties or their counsel, 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 the parties. They shall be entered at the next term of the

law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures, properly had or incurred by the Calais Water & Power Company in respect of the territory comprising said district belonging to this period, from and after said 1st day of January, 1937, or some other date as hereinbefore set forth, and all net rents and profits accruing thereafter, and shall order the net balance to be added or deducted from, the amount to be paid under such final decree, as the case may be. All findings of law and fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of Calais Water & Power Company used and usable in supplying water in the city of Calais, shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

Sec. 10. Valid contract of water company to be assumed by district. All valid contracts now existing between the Calais Water & Power Company and any persons or corporations for supplying water in the city of Calais shall be assumed and carried out by said Calais Water District.

Sec. 11. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks. For accomplishing the purposes of this act, said water district, through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the aforesaid properties and franchises of the Calais Water & Power Company, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water-plant and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount 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 section 117 of chapter 56 of the revised statutes, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 12. Property, tax exempt. The property of said district shall be exempt from all taxation in the city of Calais and in any other cities and towns where any part of its plant may be located.

Sec. 13. Water 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 used by them, and said rates shall be uniform within the territory supplied by the district and subject to approval of the public utilities commission. 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, and 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, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. Provided, however, that 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.

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

Sec. 14. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sec. 15. Local referendum. This act shall take effect when approved by a majority vote of legal voters within said district voting at an elec-

tion specially called and held for that purpose on the 2nd Monday of October, 1935. The board of registration shall make and provide a separate check list for such of the voters within said district as are then legal voters of said city and all warrants issued to said city shall be varied accordingly to show that only such voters therein are entitled to vote thereon. Such special election shall be called, advertised and conducted according to the law relating to municipal elections, provided, however, that the board of registration shall not be required to prepare or the city clerk to post a new list of voters, and for this purpose said board shall be in session the three secular days next preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the correctness of said lists and to complete and close up its records of said sessions. The city clerk shall reduce the subject matter of this act to the following questions: "Shall the act to incorporate the Calais Water District be accepted?" and the voters shall indicate by a cross placed against the words "yes" or "no" their opinion of the same. The result shall be declared by the mayor and aldermen and due certificate thereof filed by the city clerk with the secretary of state.

Sec. 16. Act void unless property of Calais Water & Power Company is acquired. If said water district shall fail to acquire by purchase or by exercise of the right of eminent domain, as in this act provided, the plant, properties, franchises, rights and privileges owned by the Calais Water & Power Company and used or usable in supplying water in the city of Calais, then this act shall become null and void.

Sec. 17. Act effective 90 days after adjournment of legislature for purposes of local referendum. This act shall take effect in 90 days after the final adjournment of the legislature, so far as necessary to empower the calling and holding of the special election authorized in section 15.

Sec. 18. Existing statutes not affected, rights conferred subject to provisions of R. S., c. 62. 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 chapter 62 of the revised statutes, and all acts amendatory thereof or additional thereto.