

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 353

H. P. 861

House of Representatives, January 30, 1941.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Brown of Corinna.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Creating the Newport Water District.

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 hereof, the inhabitants and territory of that part of the town of Newport in the county of Penobscot, which is bounded and described as follows: Commencing at a hydrant, northerly of the fire reservoir and pumping station of the Consumers Water Company, and near the Rowe farm, so-called, on the road leading to the town of Corinna, thence southwesterly in a line to the Oakes Tea House, so-called, on the road leading to the town of Pittsfield, thence southeasterly in a line to the Brown farm, so-called, on Spring street, thence easterly in a line to the Hewes residence, so-called, on Elm street, thence northerly in a line to the Doherty residence, so-called, on Adams street, thence easterly in a line to the Emerson place, so-called, on Highland avenue, thence west of northerly in a line to the Soule residence, so-called, on Josslyn street, thence west of northerly in a line to the Bolwell residence, so-called, on Grove street, thence west of northerly along the same line to Sebacicook avenue, thence northwesterly to the point of beginning; shall constitute a body politic and corporate under the name of Newport Water District for the purpose of supplying said town of Newport, and the inhabitants of said

district, with pure water for domestic, sanitary, commercial and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is hereby 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 town of Newport, and from any other source from which the Consumers Water Company is now authorized to take water.

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 or otherwise, 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, for preserving the purity of the water and water shed, for 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.

Sec. 4. Authorized to lay pipes over public ways. The said district is hereby authorized to lay in and through the streets, roads, ways, highways and bridges in said town of Newport, 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.

Sec. 5. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities. Said 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. Said water district is also hereby 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; also to supply water to any public utility now supplying water in the county of Penobscot, subject to the consent of the public utilities commission.

Sec. 6. Procedure in exercising right of eminent domain. In exercising the right of eminent domain conferred upon it by law from time to time,

or any rights of eminent domain through or under the franchise of any water company by it acquired, 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 lands or interests therein, or water rights to be taken, with an appropriate description and names of the owners thereof, if known. If 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 taking and file a new description thereof, and in such case the district is liable in damages only for the 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 ten days from said filing, whereupon possession may be had of all such lands or interests therein or water rights so taken, but title thereto shall not vest in said district until the payment therefor.

Sec. 7. Adjustment of damages; procedure as in laying out of highways.

If any person sustaining damages by any taking as aforesaid shall not agree with the district 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. 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. 8. Procedure in crossing of railroads. In case of any crossing of railroads, 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 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 shall be done under the supervision of the railroad company and to the satisfaction of said company, but at the expense of said water district, unless otherwise ordered by said public utilities commission.

Sec. 9. Board of trustees. All the affairs of said district shall be managed by a board of trustees composed of 3 members, to be appointed by the municipal officers of Newport, within 30 days after the acceptance of this act by the inhabitants of said district as hereinafter provided, but none

of the selectmen of said town 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 Newport, and organize by the election of a president and clerk, 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 to expire shall end at the end of the municipal year of the town of Newport following the acceptance of this act, and thereafter the term of office of a trustee shall expire with the end of each municipal year, 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 three 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 said town of Newport he vacates the office of trustee. 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. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board.

Sec. 10. Authority to purchase; right of eminent domain to take property of Consumers Water Company. The Newport 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 of the Consumers Water Company, except its cash assets and accounts receivable, including all stocks in other companies, 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 Consumers Water Company. Said Company is hereby authorized to sell, transfer and convey its franchises and property to said Water District. All said franchises and properties shall be taken subject to all bonds, mortgages, liens, and encumbrances thereon, all of which bonds, mortgages, liens and encumbrances shall be assumed and paid by the said Newport Water District.

Sec. 11. Procedure in case trustees and Water Company fail to agree on terms of purchase. In case said trustees fail to agree with said Consumers Water Company upon the terms of purchase of the above-mentioned property, on or before January 1, 1942, 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 on or before July 1, 1942, to file a petition in the clerk's office of the supreme judicial court for the county of Penobscot, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Consumers Water Company and its mortgagees, shall, after hearing and within 30 days after the filing of said petition, appoint 3 disinterested appraisers, none of whom shall be residents of Penobscot county, for the purpose of fixing a 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 said supreme judicial court, in term 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 supreme judicial court for the county of Penobscot for the inspection of the petitioner, so far as they relate to the service in the town of Newport, the following: first, schedule showing the names, residences and water service of all its customers on the first day of January, 1942, with the rate charged therefor; second, copies of all contracts in force on said first day of January, 1942; third, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of January, 1942, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; fourth, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said first day of January, 1942, with such brief description thereof as will reasonably identify the same; fifth, 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 ways where situated; sixth, an itemized list of all tools, apparatus, appliances and supplies used or usable in

supplying water on said first day of January, 1942. Such orders may be enforced from time to time by any justice of said supreme judicial 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 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 supreme judicial 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 first day of January, 1942, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest at 4% 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 commit it if 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 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 understand-

ing 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 company in respect of the territory comprising said district belonging to this period, from and after said first day of January, 1942, and all net rents and profits accruing thereafter, and shall order the net balance to be added to 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 performances of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said Company used and usable in supplying water in the town of Newport 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.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting justice, or in case of his inability to act, any justice of said court appointed by the chief justice may after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require. Nothing herein contained shall preclude said district from acquiring said properties from said company at any time by mutual agreement.

Sec. 12. Authority to contract for municipal supply; all valid contracts to be assumed. Said water district is hereby authorized to make contracts with the town of Newport or any municipal corporation therein for the purpose of supplying water as contemplated by this act, and the town of Newport by its selectmen or any municipal corporation in said town by its proper officers is hereby authorized to enter into a contract with said district for a supply of water for public uses on such terms and for such time as the parties may agree, which contract when made shall be legal and

binding on all parties thereto, and said town of Newport or any municipal corporation therein for said purposes may raise money in the same manner as for other municipal charges. All valid contracts now existing between Consumers Water Company and any persons, corporations or municipal corporations for supplying water in the town of Newport shall be assumed and carried out by said Newport Water District, provided copies of said contracts shall have been filed by said company in accordance with the order of the court as set forth in section eleven hereof.

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

Sec. 14. Authority to borrow money. 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 acquiring the properties and franchises of said Consumers Water Company by purchase or otherwise, of assuming and paying all mortgages, liens, and encumbrances thereon as provided in sections 10 and 11, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and making renewals, extensions, additions and improvements to the same, and protecting the watershed, the said water district through its trustees may from time to time issue bonds of the district to an 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 section 117 of chapter 56 of the revised statutes, and all of the provisions of said section shall be applicable thereto. Said notes and bonds shall be legal investments for savings banks and shall be exempt from taxation.

Sec. 15. Water rates; 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 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 one nor more than five per cent 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 remains at the end of the year, it may be transferred to the sinking fund.

Sec. 16. Incidental rights and powers granted. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

Sec. 17. Local referendum for town of Newport; meeting, how called; certificate to secretary of state. This act shall take effect when approved by a majority vote of the legal voters of said district, voting at an election specially called and held for the purpose, by the municipal officers of the town of Newport, to be held at the voting places in said town at the next regular town meeting or at a special town meeting called before that time and after this act shall become a law. The board of registration shall prepare and furnish separate check lists for such of the voters within said district as are then legal voters of said town and reside in said district, and all notices, warrants or other proceedings shall be varied accordingly so as to show that only such voters as reside in said district as aforesaid are entitled to vote upon the above question. Such special election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding said election, the 1st and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the correction of said lists and to complete and close up its records of

said session. The town clerk shall reduce the subject of this act to the following question: "Shall the act to incorporate the Newport 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 municipal officers and due certificate thereof filed with the secretary of state by the clerk of said town.

Sec. 18. Certain sections inoperative on failure to acquire Consumers Water Company plant. If said water district shall fail to acquire before July 1, 1943, by purchase or by the exercise of the right of eminent domain as in this act provided, the plant, property, franchises, rights and privileges owned by the Consumers Water Company and used or usable in supplying water to the town of Newport, then the provisions of this act relative to the acquisition of said property and franchises of the Consumers Water Company by said water district and all the provisions of section 2 of this act shall be inoperative, null and void.

Sec. 19. Public utilities commission statutes shall govern the district. 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.

Sec. 20. Costs and expenses of taking, directed by court. All costs and expenses of the taking of the property of the Consumers Water Company arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by section 11.