

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. 354

H. P. 862

House of Representatives, January 30, 1941.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Wyman of Norway.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Incorporate the Norway Water District.

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

Sec. 1. Territorial limits; name; purposes. That part of the town of Norway which is within the limits embraced by the Norway Village Corporation, and the inhabitants within the same, are hereby created a body politic and corporate by the name of the Norway 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 section 13 of chapter 62 of the revised statutes of 1930.

Sec. 2. May use certain waters. The said district for the purposes of its incorporation is hereby authorized to take, hold, divest, use and distribute water from Pennessewassee lake, Little Pennessewassee lake, Sand pond, and any driven or artesian wells in said town.

Sec. 3. May exercise eminent domain. The said district, for the pur-

poses of its corporation, 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, 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 the 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 Oxford county and record in the southern Oxford registry of deeds in said county plans of the location of lands or interests 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 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 has not been previously 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 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 interest 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 Oxford 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 utilities 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 3 trustees, residents or owners of real estate therein, who shall be elected by the municipal officers of the town of Norway. They shall hold office for the term of 3 years and until their respective successors are chosen and qualified, except, however, as hereinafter provided.

Sec. 7. Trustees; how elected; meetings; officers; vacancies filled for the unexpired term. The first board of trustees shall be elected within 3 days after the meeting of the voters of said district to accept this act, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafterward, 1 member shall be chosen at the time of each annual meeting to serve for the term of 3 years. As soon as convenient after said 1st election the 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 delivered in hand to the other 2 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by the election of a chairman and clerk from their own number, adopt a corporate seal and by-laws, and perform any other acts within the powers delegated to them by law. When necessary they may choose a treasurer and other needful officers and agents who shall serve at their pleasure, and whose compensation shall be fixed by said trustees. 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, but shall not receive any compensation therefor except as trustees unless authorized by vote of the municipal officers of the town of Norway.

The compensation of the trustees shall be \$50 each per annum unless otherwise provided by vote as above defined.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk or clerk pro tem. They shall make and publish an annual report including a report of the treasurer.

Sec. 8. Annual meeting of district; qualification of voters of district.

The annual meeting of the district shall be held in the district on the date of the annual town meeting of the town of Norway, at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. Notice thereof, signed by the chairman or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. Eleven persons qualified to vote in such meetings shall constitute a quorum. If for any reason an annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 3 months from said date.

All persons resident in said district and qualified to vote for governor under the laws of this state shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

Sec. 9. Trustees granted certain powers of selectmen. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing list of the persons qualified to vote in said district, and for that purpose they shall be in session at the place designated for holding the meeting between the hours of 10 o'clock in the forenoon and 12 o'clock noon on the secular day next before the date of every meeting; and 2 hours before the opening of the meeting, and notice thereof shall be given in the call of the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 10. District and town authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations, including the town of Norway, and said town of Norway is authorized to contract with it, for the supply of water for municipal purposes.

Sec. 11. Authorized to acquire property and franchises of Norway Water 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, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Norway Water Company, situate in the town of Norway, 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 town of Norway.

Sec. 12. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Norway 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 May 1, 1942, to file a petition in the clerk's office of the supreme judicial court for the county of Oxford, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Norway 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 Oxford 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 supreme judicial 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 supreme judicial court for the county of Oxford for the inspection of the petitioner, so far as they relate to the service in the town of Norway, the following: first, schedule showing the names, residences and water service of all its customers on the 1st day of January, 1942, with the rate charged therefor; second, copies of all contracts in force on said 1st day of January, 1942; third, an itemized statement of the gross income earned during its last com-

plete fiscal year and up to said 1st day of January, 1942, and all operating expenses and fixed charges, paid or incurred during such period and property chargeable thereto; fourth, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said 1st 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 1st 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 1st day of January, 1942, shall be the date as of the valuation aforesaid shall be fixed, 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 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 question of law arising upon said requests for instruc-

tions, 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 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 Norway Water District, in respect of the territory comprising said district belonging to this period, from and after said 1st 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 Norway Water Company used and usable in supplying water in the town of Norway 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. 13. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Norway Water Company and any person or corporations for supplying water in the town of Norway shall be assumed and carried out by said Norway Water District.

Sec. 14. 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 Norway Water 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 of 1930, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 15. Property tax exempt. The property of said district shall be exempt from all taxation in the town of Norway and in any other towns where any part of its plant may be located.

Sec. 16. 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 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 10% 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 obligation 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. 17. 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. 18. Local referendum for town of Norway; meeting, how called; certificate to secretary of state. This act, subject to the provisions of section 8 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 Norway, to be held at the voting places in town; the date of said election to be determined by said municipal officers but to be not later than the 1st day of January, 1942. 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 Norway 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. 19. Act void unless property of water company is acquired. If said water district shall fail to acquire by purchase or by the exercise of the right of eminent domain, as in this act provided, the plant properties, franchises, rights and privileges owned by the Norway Water Company

and used or usable in supplying water in the town of Norway, then this act shall become null and void.

Sec. 20. Act effective 90 days after adjournment of legislature for purposes of local referendum. This act shall take effect 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 sections 7 and 18.

Sec. 21. Existing statutes not effected; rights conferred subject to provisions of R. S., c. 56. 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 56 of the revised statutes of 1930, and all acts amendatory thereof or additional thereto.