

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. 361

H. P. 1193

House of Representatives, February 4, 1941.

Referred to Committee on Public Utilities and sent up for concurrence.
750 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Willey of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Incorporate the Ellsworth Water District.

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

Sec. 1. Territorial limits; corporation name; purposes. The following territory and the people therein, namely: That part of the city of Ellsworth and of the town of Hancock in the county of Hancock beginning on the west bank of Union river at the southeast corner of a lot of land now owned by the Heirs of Bessie Emery; thence westerly by the south line of said Emery lot to the Surry road, so-called; thence by said Surry road to the southeast corner of the Ralph Cushman homestead; thence westerly by the south line of said Cushman homestead lot 1000 feet; thence northerly to the southwest corner of the Purdy homestead, now owned by Earl R. Mann; thence northerly by the west line of said Purdy or Mann lot to the Bucksport road, so-called; thence by the Bucksport road to the southwest corner of the Doyle homestead, now owned by Margaret Smart; thence northerly by the west line of said Doyle or Smart lot to its northwest corner; thence northerly to Graham lake; thence northwesterly, northerly and northeasterly by the thread of Graham lake and Union river to the railroad bridge crossing said river; thence northeasterly to the northwest corner of the Charles Quinn homestead on North street; thence easterly following the north line of said Quinn lot to North street; thence south-

easterly to B. M. No. 172 on the Washington county branch of the M. C. R. R. near Washington Junction in the town of Hancock; thence southerly to the highway leading from Washington Junction to Hancock; thence westerly following said highway to the Maine Central railroad; thence southwesterly following said railroad to a point which is the beginning of a curve to the right; thence southerly to a point in Card's Brook, so-called, which point being 500 feet easterly measured along the thread of the brook from Route No. 1; thence westerly following said brook to Union river; thence by said river to the point of beginning; shall constitute a body politic and corporate under the name of Ellsworth Water District, for the purpose of supplying the inhabitants of the city of Ellsworth and the town of Hancock with pure water for domestic, sanitary and municipal purposes.

Sec. 2. Source of supply. The said district for effecting and carrying out the purposes of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Branch pond.

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 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 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 through public ways. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the said city of Ellsworth and town of Hancock 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, roadway 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. Procedure in exercising right or eminent domain. In exercising any right of eminent domain conferred upon it by law, the said district shall file in the office of the county commissioners, of the county where such lands or water rights are situated, 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 name 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 10 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.

Sec. 6. Adjustment of damages: procedure as in laying out a highway.

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 restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 7. Procedure in crossing of railroads. In case of any crossing of railroad, unless consent is given by the company owning or operating such railroad, as to place, manner and conditions of the crossing, within thirty 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 the public utilities commission, but at the expense of said water district unless otherwise ordered by said public utilities commission.

Sec. 8. Trustees; how chosen; powers and duties; terms of office; compensation; annual report. All the affairs of said district shall be managed by a board of trustees composed of 3 members. The said trustees shall be chosen by the municipal officers of the city of Ellsworth 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 at the city hall in the city of Ellsworth and organize by the election of a president and clerk, adopt a corporate seal and when necessary choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. At said first meeting they shall determine by lot the term of office of each trustee so that one shall serve for 1 year, one for 2 years and one for 3 years, and whenever the term of office of a trustee expires, his successor shall be chosen by the municipal officers of the city of Ellsworth. The term of office of the trustees shall begin on the 1st Monday in April and the term of office of the trustees first chosen shall be considered to date from the 1st Monday of April next prior to their election. All trustees shall be eligible to re-appointment. They may also ordain and establish such by-laws not inconsistent with the laws of the state as are necessary for their own convenience and the proper management of the affairs of said district. Said trustees may have the use of the municipal offices of the city of Ellsworth for the transaction of their business. Each member shall receive in full compensation for his services an allowance of \$100 per annum, or such other sum as may be approved by the municipal officers of the city of Ellsworth. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said water district, of its financial and physical condition, and of such other matters and things pertaining to said district as shall show the inhabitants of said district how said trustees are fulfilling the duties and obligations of their trust. Such reports shall be made and filed with the municipal officers of the city of Ellsworth on or before March 1st of each year.

Sec. 9. Authorized to acquire property and franchises of Penobscot County Water Co. 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 Penobscot County Water Company, situate in the city of Ellsworth and town of Hancock, including all lands, waters, water-rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the city of Ellsworth and town of Hancock.

Sec. 10. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Penobscot County Water Company upon the terms of purchase of the above mentioned property, on or before September 1st, 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 November 1st, 1942 to file a petition in the clerk's office of the superior court for the county of Hancock, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Penobscot County 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 Hancock 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 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 superior court for the county of Hancock, for the inspection of the petitioner, so far as they relate to the service in the city of Ellsworth, the following: 1st, schedules showing the names, residences and water service of all its customers on the 1st day of September in the year 1942, with the rate charged therefor; 2nd, copies of all contracts in force on said 1st day of September; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said September 1st, 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 interests therein, owned or controlled on said 1st day of September, 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; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said 1st day of September. 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 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 action. 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 the same. The 1st day of September, 1942 shall be the date as of which 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 recommit 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 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 questions 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 agree-

ment 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 Penobscot County Water Company in respect of the territory comprising said district belonging to this period, from and after said 1st day of September, 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 performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of Penobscot County Water Company used and usable in supplying water in the city of Ellsworth shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any stage of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

Sec. 11. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Penobscot Water Company and any persons or corporations for supplying water in the city of Ellsworth shall be assumed and carried out by said Ellsworth Water District.

Sec. 12. 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 Penobscot County 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 water 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 116 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. 13. Property tax exempt. The property of said district shall be exempt from all taxation in the city of Ellsworth and in any other towns where any part of its plant may be located.

Sec. 14. 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 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 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. 15. 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. 17. Local referendum for city of Ellsworth; meeting, how called; form of ballot; certificate to secretary of state. This act, subject to the provisions of section 16, shall take effect when approved by a majority vote

of the legal voters of so much of said district as lies within the limits of the city of Ellsworth, voting at an election specially called and held for the purpose, by the municipal officers of the city of Ellsworth, to be held at the voting places in each ward in said city; the date of holding said election to be determined by said municipal officers but to be not later than March 2nd, 1942. The board of registration shall prepare and furnish separate check lists for the several wards for such of the voters within said district as are then legal voters of said city and reside in that part of said several wards which is embraced 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, that the board of registration shall not be required to prepare nor the city 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 first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said list and to complete and close up its records of said sessions. The city clerk shall reduce the subject of this act to the following question: "Shall the act to Incorporate the Ellsworth 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 city council and due certificate thereof filed with the secretary of state by the clerk of said city.

Sec. 18. 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 Penobscot County Water Company and used or usable in supplying water in the city of Ellsworth and town of Hancock then this act shall become null and void.

Sec. 19. 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 sections 16 and 17 herein.

Sec. 20. 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.