

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. 1081

H. P. 1864

House of Representatives, April 1, 1941.

Reported by Mr. Cousins from the Committee on Public Utilities and laid on table to be printed under joint rules. 750 copies order printed.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Incorporate the Milo 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 town of Milo, and the inhabitants within the same, which is bounded and described as follows: Commencing at a point on the westerly shore of Pleasant river in Milo, said point also being the northwest corner of Lot 68, thence in a southeasterly direction along the west shore of said Pleasant river to the intersection of the shore line with the east bound of Lot 44, thence from this point south along the east bound of Lot 44 to the southeast corner of said lot, which point is also the northeast corner of Lot 126, thence along the east bound of Lots 126 and 127 to the southeast corner of Lot 127, which point is also the northeast corner of Lot 128, thence along the north bounds of Lots 128 and 134, to the westerly shore of Sebec river, thence along the westerly shore of said Sebec river in a southeasterly direction to the intersection of the said Sebec river with the Piscataquis river, thence from this point of intersection in a westerly direction along the north shore of Piscataquis river to the intersection of the shore line with the west bound of Lot 14, thence along the west bounds of Lots 14, 82, 81 and 80 in a northerly direction to the northeast corner of Lot 33,

thence from this point in a westerly direction along the north bound of Lot 33 to the northwest corner of said lot, thence in a northerly direction along the west bound of Lot 34 to the state highway leading from Milo village to Dover-Foxcroft, thence along said state highway in a westerly direction to the intersection of state highway with the so-called Thomas or Carver road, thence along the so-called Thomas or Carver road in a northerly direction to the north bound of Lot 30, thence westerly along the north bound of Lot 30 to the northeast corner of said Lot 30, thence southerly along the east bound of Lot 30 to the southwest corner of Lot 37, thence along the south bound of Lot 37 to the easterly shore of Sebec river, thence northerly along the easterly shore of said Sebec river to the northwest corner of the south half of Lot 99, thence along the north bound of the south half of Lot 99 to the state highway leading from Milo village to Brownville, thence in a southerly direction along said state highway to the northwest corner of Lot 68, thence along the north bound of said Lot 68 to the point of beginning; said lot and numbers and boundaries being according to the Colby Atlas of Piscataquis county published in the year 1882; are hereby created a body politic and corporate by the name of the Milo Water District for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, commercial and municipal purposes, and also for providing adequate sewerage facilities for the collection, discharge and disposition of sewage as may be necessary for the convenience and health of the inhabitants of said district.

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 advice therefor in writing, under the power vested in said commission by section 13 of chapter 62 of the revised statutes of 1930.

Sec. 2. Powers of said Milo Water District. The said district, for the purpose of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from the Sebec river in the town of Milo, and from any surface or underground brook, spring or vein of water in said town of Milo, and to do any and all things necessary in providing a system of sewerage and drainage for public purposes and for the health and comfort and convenience of the inhabitants of said district.

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, including the exercise of eminent domain, 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 watershed, 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 within the district as described in section 1 and across private lands therein, and to maintain, repair and replace, all such pipes, mains, conduits, 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, and may, for the purposes provided in this act, do any and all things necessary in providing a system of sewerage and drainage for public purposes and for the health, comfort and convenience of the inhabitants of said district.

Provided, however, nothing herein contained shall be construed as authorizing said water district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized thereto herein or by subsequent act of the legislature, or as provided in section 5 hereof.

Sec. 4. Procedure. After the original acquisition for which provision is made in sections 11 and 12 of this act, the said district, in exercising, from time to time, any right of eminent domain conferred upon it by law or through or under the franchise of any water company by it acquired shall file written application with the public utilities commission requesting its approval of the proposed taking. Such application shall describe the property or rights to be taken, the purpose of the taking, and shall name all parties who may be interested therein; the commission thereupon shall appoint a time for a hearing near the premises, and shall require such notice as the commission may direct to be given to the persons interested at least 14 days before the date of the hearing; the commission then shall view the premises, hear the parties, and shall determine how much, if any, of the property described in the petition should be taken for the reasonable

purposes of the water district and for the safe, economical and efficient furnishing of an adequate water supply or sewerage system; and in authorizing any taking the commission may attach such reasonable terms, limitations and restrictions as justice may require. If the commission shall find that any of the property described in the application is necessary for the aforesaid purposes of the district, it shall make a certificate containing a definite description of the property to be taken, and of any terms, restrictions and limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the clerk of the commission; and when such copy of the certificate is filed with the clerk of courts in the county where the property lies, the property shall be deemed and treated as taken; provided, however, that when property is held by a tenant for life and the reversion or remainder is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice to the tenant for life, shall require notice by publication, in such manner as it may deem proper, to all others interested. Entry may be made on any private land prior to the filing of any such application for the purpose of making surveys, the district being responsible for any damage resulting from such entry, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

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 Piscataquis county 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. 5. Procedure if public utility must be crossed. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility 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 on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, 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, resident therein, who shall be appointed

by the municipal officers of the town of Milo. They shall hold office as hereinafter provided and until their respective successors are appointed and qualified. Whenever the term of office of a trustee expires, the municipal officers of the town of Milo shall appoint a successor to serve the full term of 3 years, and in case of any other vacancy arising from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of said district, his office as trustee shall be declared vacant. None of the selectmen of said town of Milo shall serve as a member of the board of trustees of the district.

Sec. 7. Trustees; how elected; meetings; officers; vacancies filled for the unexpired term. The first board of trustees shall be appointed within 10 days after the acceptance of this act by the voters of said district, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafter, 1 member shall be appointed at the time of each annual meeting to serve for a term of 3 years. As soon as convenient after their appointment the trustees first appointed 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 and waiver 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. As necessary, they may choose agents and other needful officers who shall serve at their pleasure, and whose compensation shall be fixed by said trustees. They shall choose annually a treasurer to serve for a term of one year, fix the treasurer's salary which shall in no case exceed \$200 per year, and fill vacancies in that office. The treasurer shall furnish a bond, issued in such sum by a surety company as the trustees may approve, and the expense of securing the bond is to be borne by the district. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor, except as trustee, unless authorized by vote of the municipal officers of the town of Milo.

The compensation of the trustees shall not exceed \$25 each per annum, unless otherwise provided by vote, as above provided.

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 tempore. They shall make and publish an annual report which shall also contain 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 within the district on the 1st Monday of February, 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. Ten per centum of the voters qualified to vote in such meetings shall constitute a quorum. If for any reason a legally sufficient annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 2 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 lists 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 also 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 Milo, and said town of Milo is authorized to contract with it, for the supply of water and sewerage facilities for municipal purposes.

Sec. 11. Authorized to acquire property and franchises of Milo Water Company; also sewer facilities from town of Milo. Said 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 Milo Water Company, situate in the town of Milo, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hy-

drants, tools and all apparatus and appliances used or usable in supplying water and in the collection, discharge and disposition of sewage in the town of Milo.

The district is further authorized to purchase, and the town of Milo to sell to such district, the existing sewer line and facilities situate in Milo and draining into Pleasant river and now owned by such town, including such equipment for use in connection therewith as the district and town may agree upon. In event of the failure of the parties to agree upon a purchase price therefor, such price shall be fixed by arbitration and appraisers shall be appointed upon petition filed by the district in the clerk's office of the supreme judicial court for the county of Piscataquis in term time or vacation and addressed to any judge of such court; said judge, after due notice to the town of Milo and to the district, and after hearing, shall appoint 3 disinterested appraisers for the purpose of fixing a fair purchase price for said sewer line and facilities. The fair purchase price fixed by such appraisers or by a majority of them and certified to the district and to the town of Milo shall be final and binding upon both parties. But in fixing such fair purchase price, no account shall be taken by the appraisers of the cost or value of labor or other benefits furnished or contributed by governmental or other agencies without expense to the town.

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 Milo 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 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 Piscataquis, in term time or in vacation, addressed to any judge of such court, who, after due notice to said Milo Water Company and its mortgagees, shall, after hearing and within 30 days after the date on which said petition is returnable, appoint 3 disinterested appraisers 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 the 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 Piscataquis for the inspection of the petitioner, so far as they relate to the service in the town of Milo, the following: first, schedule showing the names, residences and water service of all of its customers, and the same information regarding the sewer service, of the Milo Water Company on the 1st day of January, 1942, with the rates 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 complete 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 properly chargeable thereto; fourth, a memorandum of all real estate, water rights and sewer rights, or interests 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, conduits, fixtures and machinery and all the physical elements in such water and sewer systems, 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 and providing for the collection, discharge, and disposition of sewage 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 water mains and pipes and sewerage pipes and conduits of said water company, externally and internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by said 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 ap-

praisers 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 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 district. The reports 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 request 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 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 and after notice and hearing, take account of all receipts and expenditures properly had or incurred by the Milo Water Company 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 performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of Milo Water Company used and usable in supplying water and in the collection, discharge and disposition of sewage in the town of Milo shall become vested in said district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, but 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. 13. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Milo Water Company and any person or corporations for supplying water in the town of Milo shall be assumed and carried out by said Milo Water District.

Sec. 14. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investment for savings banks. For accomplishing the purposes of this act, said 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 this district, in acquiring the aforesaid properties and franchises of Milo 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 sewage disposal system 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 district, which is hereby declared to be a quasi-municipal corporation within the meaning of section 116 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 by the town of Milo.

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 service used by them, and said rates shall be uniform within the territory supplied by the district, and the water rates shall be subject to the approval of the public utilities commission. Said water and sewer 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 sewer system.

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. 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 the town of Milo; meeting, how called; certificate to secretary of state. This act shall take effect except as hereinafter provided when accepted at an election specially called and held for the purpose, but only if the total number of votes cast for and against acceptance of this act in said special election equals or exceeds 20% of the total number of names on the check list of voters of said district provided for herein, which check list shall be used at such election; but failure of approval by the necessary percentage of voters shall not prevent a second election. Said elections shall be called by the municipal officers of the town of Milo and shall be held at the regular voting place in the town; the dates of said elections shall be determined by said municipal officers but

shall not be 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 Milo 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 district shall fail to purchase or file its petition to take by eminent domain before July 1, 1942, as in this act provided, the plant, properties, franchises, rights and privileges owned by the Milo Water Company and used or usable in supplying water and in providing an adequate system for the collection, discharge and disposition of sewage in the town of Milo, then this act shall become null and void.

Sec. 20. Act effective for referendum. Despite the provisions of section 18 hereof providing for acceptance of this act by vote of the district, this act shall take effect 90 days after the final adjournment of the legislature for all purposes and for the performance of all acts, including the calling and holding of the special elections authorized in section 18, necessary or permissible hereunder until the act be accepted in accordance with section 18 whereupon the act takes complete effect.

Sec. 21. Existing statutes not affected; rights conferred subject to provisions of law. 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.