

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. 1082

H. P. 1865

House of Representatives, April 1, 1941.

Reported by Mr. Brown from Committee on Public Utilities and laid on table to be printed under joint rules.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Incorporate the Presque Isle 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. The part of the city of Presque Isle, and the inhabitants within the same, which is bounded and described as follows: Commencing at a point on the south line of that part of the city of Presque Isle which was formerly the town of Maysville, and which will hereinafter be referred to as Maysville, which point is the northwest corner of lot numbered 5, in said Presque Isle; thence easterly by said south line of said Maysville to the southeast corner of section numbered 3, in said Maysville; thence northerly by the east line of section numbered 3, in said Maysville, to the intersection of said east line with the center line of the Fort Fairfield road as it is now located; thence westerly by said Fort Fairfield road, to the point where the same strikes the old road running to the farm formerly owned by George A. Parsons and now owned or occupied by Alice Kimball, said road not now being used by the public and a portion of same having at one time been occupied by the Aroostook Valley Railroad Company as a right of way; thence northwesterly by said old road running to the so-called George A. Parsons farm to the intersection of said road with the north line of section numbered 3 in said Mays-

ville; thence westerly along the north lines of sections numbered 3, 2, and 1, in said Maysville, to the northwest corner of lot numbered 1 in section numbered 1, in said Maysville; thence southerly by west line of said lot numbered 1 to the south line of said Maysville; thence southerly from the last mentioned point in a straight line, to the northwest corner of lot numbered 83 in said Presque Isle; thence southerly by the west line of lot numbered 83 to a point from which a line drawn at right angles to said west line of said lot numbered 83 will strike the southwest corner of lot numbered 27 in said Presque Isle; thence easterly, in a straight line, to the southwest corner of lot numbered 27, in said Presque Isle; thence easterly by said south line of said lot numbered 27 to the southwest corner of lot numbered 26, in said Presque Isle; thence northerly along the west line of said lot numbered 26 to the south line of lot numbered 15, in said Presque Isle; thence easterly by the south line of said lot numbered 15 to the southwest corner of lot numbered 14, in said Presque Isle; thence northerly by the west line of lots numbered 14 and 5, in said Presque Isle, to the south line of said Maysville and the place of beginning; said lot and numbers and section numbers being according to the original surveys of that part of said Presque Isle which was formerly Maysville and of said Presque Isle, made and returned to the state land office; are hereby created a body politic and corporate by the name of Presque Isle 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 advice therefor in writing, under power vested in said commission by section 13 of chapter 62 of the revised statutes of 1930.

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 the Presque Isle stream in the city of Presque Isle, the town of Mapleton or the town of Chapman and from said stream in any or all of said city and towns and from any surface or underground brook, spring or vein of water in said Presque Isle.

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, 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 main, 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.

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 8 and 9 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; 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 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 Aroostook 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 such district, the public utilities commission shall determine the place, manner and conditions of such crossings; 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. Trustees; how chosen; powers and duties; term of office; compensation; annual report. All the affairs of said district shall be managed by a board of trustees composed of 3 members to be appointed by the city council of the city of Presque Isle, but no member of the city council shall, during the term for which he is elected, be appointed one of said board of trustees. As soon as convenient after the members of said board have been

appointed, said trustees shall meet 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 city council of the city of Presque Isle. 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 reappointment. 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 Presque Isle for the transaction of their business. Each member shall receive in full compensation for his services an allowance of \$50 per annum, or such other sum as may be approved by the city council of the city of Presque Isle. 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 city council of the city of Presque Isle on or before March 1st of each year.

Sec. 7. District and town authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations including the city of Presque Isle for supply of water, and said city of Presque Isle is authorized to contract with it for the supply of water for municipal purposes.

Sec. 8. Authorized to acquire property and franchises of Presque Isle 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 Presque Isle Water Company, situate in the city of Presque Isle, 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 Presque Isle.

Sec. 9. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Presque Isle 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 Aroostook, in term time or in vacation, addressed to any justice of such court, who, after due notice to said Presque Isle 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, one of whom shall be learned in the law and none of whom shall be residents of Aroostook 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 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 Aroostook, for the inspection of the petitioner, so far as they relate to the service in the city of Presque Isle, the following: first, schedules 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 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, 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 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 after their appointment, and such single justice, or, in case of his inability be filed in said clerk's office, in term time or in vacation, as soon as may be to act, any justice of the supreme judicial 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 endorse 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 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 Presque Isle 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 Presque Isle Water Company used and usable in supplying water in the city of Presque Isle 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, 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. 10. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Presque Isle Water Company and any persons or corporations for supplying water in the city of Presque Isle shall be assumed and carried out by said Presque Isle Water District.

Sec. 11. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal

investments for savings banks. For accomplishing the purposes of this act, said water district, through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest-bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district in acquiring the aforesaid properties and franchises of the Presque Isle 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 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. 12. Property tax exempt. The property of said district shall be exempt from all taxation in the city of Presque Isle and in any towns where any part of its plant may be located.

Sec. 13. Water rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the territory supplied by the district and subject to approval of the public utilities commission. Said rates shall be so established as to provide revenue for the following purposes:

1. To pay current expenses for operating and maintaining the water 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 no less than 1% of the amount of the bonds so issued shall mature and be retired each year.

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

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

Sec. 15. Local referendum for city of Presque Isle; meeting, how called; form of ballot; certificate to secretary of state. This act shall take effect, except as hereinafter provided, when accepted by a majority vote of the legal voters of said district, voting at an election specially called and held for the purpose by the city council of the city of Presque Isle, to be held at the voting places in each ward, any part of which lies within the said district, in the city, 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; the dates of said elections to be determined by said city council, but to be not later than the 1st day of January, 1942. The board of registration shall prepare and furnish separate check lists for said 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, 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 1st and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up its records of said session. The city clerk shall reduce the subject of this act to the following question: "Shall the act to incorporate the Presque Isle 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. 16. Act void unless property of water company is acquired. If said water 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 Presque Isle Water Company and used or usable in supplying water in the city of Presque Isle, then this act shall become null and void.

Sec. 17. P. & S. L., 1939, c. 34, repealed. Chapter 34 of the private and special laws of 1939 is hereby repealed.

Sec. 18. Act effective 90 days after adjournment of legislature pending local referendum. Despite the provisions of section 15 hereof providing for acceptance of this act by a majority vote of the legal voters 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 15, necessary or permissible hereunder until the act be accepted in accordance with section 15 whereupon the act takes complete effect.

Sec. 19. Existing statutes not affected; rights conferred subject to provisions of law. Except as provided in section 17 hereof, 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.