

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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

Legislative Document

No. 1183

H. P. 1942

House of Representatives, January 13, 1942.

Referred to Committee on Public Utilities, sent up for concurrence and 600 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Seeger of Kittery.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-TWO

AN ACT to Incorporate the Eliot Water District.

Emergency preamble. Whereas, the population of the town of Eliot is rapidly increasing, and

Whereas, the recent increase in defense activities at the Kittery Navy Yard is indicative of further and abnormal increase in the immediate future, and

Whereas, at present the town of Eliot has no adequate water system, and

Whereas, it is immediately essential to the public health of the inhabitants of said town of Eliot that a suitable and adequate water system be immediately provided for said town both for the protection of the health of the citizens and for the adequate fire protection, and

Whereas, in the judgment of the legislature these facts constitute an emergency within the meaning of section 16 of Article XXXI of the Constitution of the State of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now therefore

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

Sec. 1. Territorial limits; corporate name; purposes. The inhabitants and the territory within the town of Eliot in the county of York shall be and hereby are constituted a public municipal corporation under the name of the Eliot Water District for the purpose of supplying the inhabitants of the town of Eliot with pure water for domestic, commercial, sanitary and municipal purposes and with the right to sell water for said purposes to the United States of America or any agency thereof or to any adjoining water district or company. 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 affecting and carrying out the purposes of its incorporation is hereby authorized to take, hold, divert, use and distribute water from York pond in said county of York and from any surface or underground brook, spring or vein of water in said town of Eliot or from any stream or pond not in actual use for domestic purposes.

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 by right of eminent domain, any lands or interests therein, and in any other towns served by it, 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. Provided, however, nothing herein contained shall be construed as authorizing said water district to take by right of eminent domain any of the properties 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 7 hereof.

Sec. 4. Authorized to lay pipes over public ways. The said district is hereby authorized to lay in and through the streets, roads, ways, highways and bridges in said town of Eliot and across private lands therein and to maintain, repair and replace all such pipes, aqueducts and fixtures as

may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authorized to erect dams and reservoirs. Said water district is hereby authorized for the purposes of its incorporation to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes.

Sec. 6. Procedure in exercising right of eminent domain. Except for the procedure for acquisition of the properties of the Kittery Water District now within the town of Eliot for which provision is made in sections 12 and 13 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 the district upon the sum to be paid therefor, either party upon petition to the county commissioners of York county may have such damages assessed by them. The procedure and all subsequent proceedings and right of appeal therefrom shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by the laying out of highways.

Sec. 7. Procedure in crossing of railroads or utility rights of way. In case of any crossing of a railroad, or the right of way occupied by the transmission or distribution lines of an electric company, unless consent is given by the company owning or operating such railroad or transmission line, as to place, manner and conditions of the crossing, within 30 days after such consent is requested by such district, the public utilities commission shall, upon petition setting forth a description of said premises and the reasons for said crossing after notice given as said commission may prescribe, determine the place, manner and conditions of such crossing; and all work within the limits of such railroad location or right of way shall be done under the supervision and to the satisfaction of such railroad company or electric company as the case may be, but at the expense of the district unless otherwise ordered by said public utilities commission, which shall award to said railroad or electric company any damage suffered by it occasioned by said crossing.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of 3 trustees, residents therein, who shall be elected by the legally registered voters of the district, shall hold office for the term of 3 years and until their respective successors are chosen and qualified, except, however, as hereinafter provided.

The first board of trustees shall be elected at the same time as the referendum for the town of Eliot for the acceptance of the provisions of this act is held as hereinafter provided, one to serve until the 1st annual meeting of the district, one until the 2nd, and one until the 3rd such meeting.

Thereafter, one member shall be elected at the time of each annual meeting to serve for the term of 3 years. Vacancies shall be filled for the unexpired term. As soon as convenient after the first 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 legally registered voters of said district as hereinafter provided. The compensation of the trustees shall be \$50 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. 9. 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. Eleven persons qualified to vote at said meeting 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. 10. Manner of obtaining list of voters of district. The list of voters in said district as prepared by the selectmen of Eliot as qualified to

vote at the annual meeting of said town shall be used as the list of voters qualified to vote at the annual meeting of the district. For the holding of a special meeting of said district the trustees of said district 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 shall be in session at a place set by the trustees between the hours of 10 o'clock in the forenoon and 12 o'clock noon on the secular day next before the date 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. 11. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations including the town of Eliot, the Kittery Water District and the United States of America or any agency thereof and the town of Eliot and the Kittery Water District are authorized to contract with it for the supply of water for municipal or governmental purposes. Said water district is further authorized to accept grants and the cooperation of the United States of America or any agency thereof in the construction, maintenance, re-construction, operation and financing of said water district and do any and all things necessary in order to avail itself of such aid and cooperation. All valid contracts made in good faith now existing between the Kittery Water District and any persons, corporations or municipal corporations for supplying water in the town of Eliot shall be assumed and carried out by said Eliot Water District, provided copies of said contracts shall have been filed by said Kittery Water District in accordance with the order of the court as set forth in section 13 hereof.

Sec. 12. Authorized to acquire certain property and franchises of the Kittery Water District in the town of Eliot. 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 properties, franchises, rights and privileges now owned by the Kittery Water District and lying within the town of Eliot including all lands, waters, water rights, structures, reservoirs, pipes, machinery, fixtures, hydrants, and other apparatus located within said town of Eliot, said Kittery Water District is hereby authorized to sell, transfer and convey its properties as above described lying within the town of Eliot to the said Eliot Water District.

Sec. 13. Procedure in case trustees and Kittery Water District fail to agree on terms of purchase. In case the trustees of the Eliot Water District fail to agree with the trustees of the Kittery Water District upon the terms of the purchase of the above mentioned property on or before January 1, 1943, said Eliot Water District, through its trustees aforesaid is hereby authorized to take said properties lying within said town of Eliot 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, 1943, to file a petition in the clerk's office of the supreme judicial court for the county of York in term time or in vacation addressed to any judge of such court, who, after due notice to the trustees of the Kittery Water District and its mortgagees, if any, 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 property 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 matters to be heard by said appraisers the terms and conditions of so producing and filing of 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 said Kittery Water District shall file in the clerk's office of the supreme judicial court for the county of York for the inspection of the petitioner so far as they relate to the service in the town of Eliot the following: first, schedule showing the names, residences and water service of all its customers in said town of Eliot on the 1st day of January, 1943, with the rates charged therefor; second, copies of all contracts in force on said 1st day of January, 1943; third, a memorandum of all real estate, water rights or interests therein owned or controlled in said town of Eliot on said 1st day of January, 1943, with such brief description thereof as will reasonably identify the same; fourth, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, shutoff boxes, conduits and fixtures in said Eliot, giving in detail quantities, sizes, lengths and specifying the streets, roads or ways where situated. Such orders may be enforced from time to time by any justice of the 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 conduits of said Kittery Water District within said town of Eliot, externally or internally, in the presence of the officers or agents of said Kittery Water District. The entire expense thereof to be borne by said Eliot 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 witnesses or person in charge of said books, accounts and papers refusing to attend or produce the same shall be subject to the same penalties and proceedings so far as applicable as witness 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 properties within said town of Eliot at what they are fairly and equitably worth so that the said Kittery Water District shall receive just compensation for all and the same. The 1st day of January, 1943, 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 Eliot Water 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 requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property of said Kittery Water District within the town of Eliot. 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 heard after the filing and entries of said decrees 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 Kittery Water District, in respect to the properties in said Eliot belonging to this period from and after said 1st day of January, 1943, 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 of said Eliot Water District of the amount so allowed and the performance of all the other terms and conditions so imposed by said court, the properties of the Kittery Water District within the town of Eliot shall become vested in said Eliot Water District. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

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

Sec. 14. Property tax exempt. The property of said district shall be exempt from all taxes in the town of Eliot and in all other towns where any part of its plant may be located.

Sec. 15. Authority to borrow money. For accomplishing the purposes of this act, said water district, through its trustees, is authorized to borrow money temporarily and to issue therefor the negotiable notes of the district, and for the purpose of refunding the indebtedness so created, for paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the

district, in acquiring the properties and franchises of the Kittery Water District 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 renewals, 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 or amounts necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi-municipal corporation within the provisions of sections 116 and 117 of chapter 56 of the revised statutes of 1930, and all of the provisions of said sections shall be applicable thereto. Said notes and bonds shall be legal investments for savings banks and shall be exempt from taxation.

Sec. 16. Water rates; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them; and the rates for water so supplied shall be uniform within the territory supplied by the district and subject to the 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.

2. To provide for the payment of the interest on the indebtedness created or assumed by the district.

3. To provide each year a sum equal to not less than 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 such indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. 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 transferred to the sinking fund.

Sec. 17. Incidental rights and powers granted. All incidental rights, powers and privileges necessary to the accomplishment of the main object

herein set forth are granted to the public municipal corporation hereby created.

Sec. 18. Local referendum for the town of Eliot; meeting; how called; certificate to secretary of state. This act subject to the provisions of section 22 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 for the town of Eliot to be held at the voting place in said town, the date of said election to be determined by said municipal officers but to be not later than November 1, 1942, but if and only if the total number of votes cast for and against the acceptance of this act in said special election equals 20% of the total number of names on the check list of voters of said district provided for herein, but failure of approval by the necessary percentage of voters at such special election shall not prevent a second election held at a regular town meeting within the time limitation of section 19 hereof. The special election provided for herein shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of registration of said town of Eliot shall not be required to prepare for posting or the town clerk to post a new list of voters, and for the purpose of registration of voters, said board shall be in session the 3 secular days next preceding such 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 lists and to complete and close up their records of said sessions. Voting shall be by written ballot. The town clerk shall reduce the subject of this act to the following question: "Shall the act to incorporate the Eliot 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 certificates 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 file its petition to take by eminent domain on or before May 1, 1943, as in this act provided the properties owned by the Kittery Water District within the town of Eliot then this act shall become null and void.

Sec. 20. Public utilities commission statutes shall govern the district. Nothing herein contained is intended to repeal or shall be construed as repealing the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 62 of the revised statutes of Maine of 1930 and all acts amendatory thereof or additional thereto.

Sec. 21. Costs and expenses of taking; directed by court. All costs and expenses of the taking of the property of the Kittery Water District arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by section 13.

Sec. 22. Emergency clause, effective date for the purposes of local referendum. In view of the emergency recited in the preamble of this act so much of this act as is necessary to authorize its acceptance or rejection by the legal voters of the district as provided in section 18 shall take effect when approved for all purposes and for the performance of all acts including the holding of the special election authorized in section 18 necessary or permissible hereunto until the act be accepted in accordance with section 18 whereupon the act shall take complete effect.