

MAINE STATE LEGISLATURE

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N I N E T Y - F I F T H L E G I S L A T U R E

Legislative Document

No. 227

H. P. 391

House of Representatives, January 26, 1951.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Jones of Bowdoinham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Creating the Richmond Utilities District.

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

Sec. 1. Territorial limits and corporate name and purposes. The inhabitants of and territory within the town of Richmond in the county of Sagadahoc shall be, and hereby are, constituted a body politic and corporate under the name of the "Richmond Utilities District" for the purpose of supplying the town of Richmond and the inhabitants of said town or any part of said town with pure water for domestic, commercial, sanitary and municipal purposes, including the extinguishment of fires, and of supplying the town of Richmond and the inhabitants of said town or any part of said town with suitable and adequate sewerage facilities.

Sec. 2. Powers of said Richmond Utilities District. Said Richmond Utilities District is hereby authorized for the purposes aforesaid to take, collect, store, flow, use, detain, distribute and convey to the town of Richmond or any part thereof water from any lake, pond, stream, or river and from any surface or underground brook, spring, or vein of water in said town of Richmond, and is also authorized to locate, construct and maintain aqueducts, pipes, conduits, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor, and do all things necessary to

furnish water, and sewerage and drainage for public purposes and for public health, comfort and convenience of the inhabitants of said district.

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, eminent domain, or otherwise, any land or interest therein, or water rights necessary 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, reservoirs, mains, aqueducts, structures and lands, also all things necessary to supply water as aforesaid. The said district may, for the purposes outlined in this chapter, 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, and either by construction or purchase, but nothing in this shall be construed to give said district the power to own property outside the limits of said town of Richmond provided, however, nothing herein contained shall be construed as authorizing said 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.

Sec. 4. Authorized to lay mains, pipes, conduits, through public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the town of Richmond and other towns served by it 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, aqueducts, or conduits in any street, roadway or highway, it shall cause the same to be done with as little obstruction as practical 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 conditions.

Sec. 5. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in sections 10, 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 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 shall then 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 district; 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, and 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.

Sec. 6. Adjustment of damages. If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Sagadahoc county may have said damages assessed by them; the procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

Sec. 7. Procedure in crossing of public utility rights of way. In case of any crossing of a public utility, unless consent is given by the 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, 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 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 unless otherwise ordered by said public utilities commission, which shall award to said public utility any damage suffered by it occasioned by said crossing.

Sec. 8. Board of trustees; election. Within 60 days of the time said district is accepted by the inhabitants of said town of Richmond, the selectmen of Richmond shall call a meeting of the inhabitants of said district in the same manner in which a town meeting is called. Said meeting shall organize by the election of a moderator and then shall elect 3 trustees by the Australian ballot as provided for in sections 46 to 60, inclusive, of chapter 80 of the revised statutes of 1944. All inhabitants of said district who are bona fide voters in said town of Richmond shall be entitled to vote in said meeting and in subsequent district meetings. The selectmen of Richmond shall prepare a check list of the inhabitants of said district entitled to vote in said meetings. Said trustees elected at said 1st district meetings shall determine by lot the term of office of each trustee so that one shall serve until the day of the next annual district meeting, one until the 2nd annual district meeting and one until the 3rd annual district meeting. On the same day of the annual town meeting of inhabitants of said Richmond in each year there shall be held the annual meeting of the inhabitants of the utilities district. At each annual meeting of said district the voters therein shall elect 1 trustee to hold office for a term of 3 years. Said meeting shall also determine the compensation to be given said trustees for their services and shall make recommendations to the trustees as to the manner in which the affairs of the district are to be handled. Each trustee shall hold office until his successor is elected and signifies his acceptance of office. No oath of office shall be required of said trustees. In case of the resignation, removal of his principal place of abode from said district or inability of a trustee to serve, the selectmen of said town of Richmond shall declare a vacancy in the office of said trustee and they shall immediately thereafter select a new trustee to serve until the next annual meeting of said district, at which time a trustee shall be elected to serve the balance of the term of office of the said trustee. No member of the board of selectmen of said town of Richmond shall be a trustee of the utilities district.

Sec. 9. Board of trustees; powers and duties. All the affairs of the

said district shall be managed by said board of trustees. As soon as convenient after the members of said board have been elected, said trustees shall meet and organize by the election of a chairman and clerk, and adopt a corporate seal. At such time as the town of Richmond shall be employing a town manager, said town manager shall be administrative head of the water system and responsible to the trustees. His powers and duties in connection therewith shall be the same as in the management of the municipal affairs of the town so far as applicable. Said town manager shall be bonded in an amount considered proper by said trustees and the cost of such bond shall be borne by the district. All trustees shall be eligible for reelection. They may also ordain and establish such by-laws, not inconsistent with the laws of the state, as are necessary for their convenience and the proper management of the affairs of said district. Said trustees may have the use of the municipal offices of the town of Richmond for the transaction of their business. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said utilities district, of the financial and physical condition of said district 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 report shall be made and filed with the board of selectmen of the town of Richmond on or before February 10 of each year. The fiscal year of said district shall end on January 31 of each year.

Sec. 10. Authorized to acquire property and franchises of Richmond Water Company, and sewerage facilities of town of Richmond. Said utilities district is hereby authorized and empowered to acquire by purchase or by exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, property, franchises, property rights, privileges and assets owned by the Richmond Water Company in said district.

The district is also authorized, for the purposes aforesaid, to take over and hold the existing sewerage system of the town and said town is hereby authorized to transfer and convey to said district any property, real, personal and mixed, now or hereafter owned by the town of Richmond for sewerage purposes. Before transferring and conveying any of said property or turning over any of said assets, the municipal officers of the town of Richmond shall be duly authorized to do so by a majority vote of the legal voters present at any annual or special town meeting, the call for which shall have given notice of such proposed action. Said district shall have all the authority given to said towns by sections 2 and 3 of chapter 56

of the private and special laws of 1895, as amended, and further to do 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.

Sec. 11. Valid contracts of present company to be assumed by district.

All valid contracts now existing between the Richmond Water Company and said town or other towns and any persons or corporations for supplying water in the town of Richmond and elsewhere shall in the event of such acquisitions be assumed and carried out by said Richmond Utilities District.

Sec. 12. Procedure in case trustees fail to agree on terms of purchase.

In case said trustees fail to agree with the Richmond Water Company, its successors or assigns, upon the terms of purchase of said properties on or before the 1st day of January 1952, said district, through its board of trustees aforesaid, is hereby authorized to take the plant, property and franchises of said company as for public use by petition therefor in the manner hereinafter provided. Said district through its trustees is hereby authorized after January 1, 1952 and before July 1, 1952 to file its petition, if proceedings are necessary against said company, in the clerk's office of the superior court of the county of Sagadahoc in term time or in vacation addressed to any justice of said court who, after due notice to the company interested and their mortgagees, shall after hearing and within 30 days after the date at 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 Sagadahoc 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 said superior court, in term 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 company shall file in the clerk's office of the superior court for the county of Sagadahoc for the inspection of the petitioner, the following: 1st, schedule showing the names, residences and character of service of all its customers on the 1st day of January, 1952, with the rate charged therefor; 2nd, copies of all contracts in force on said 1st day of January 1952; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of

January, 1952, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; 4th, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said 1st day of January, 1952, with such brief description thereof as will reasonably identify the same; 5th, brief description, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate-boxes, shut-off boxes, fixtures and machinery and all physical elements in such water system, giving in detail quantities, size, lengths and specifying the streets, roads or ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in maintaining said water system on said 1st day of January, 1952. Such orders may be enforced from time to time by any justice of said superior court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting, may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the physical properties of the said water company in the presence of the officers or agents of said 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 superior 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 company shall receive just compensation for all and the same. The 1st day of January, 1952, 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 report of said appraisers or a majority of them shall be filed in said clerk's office in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same or recommit it if justice so requires.

Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all questions of law arising upon 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, plant and franchises of said company. Upon the confirmation of said report the court so sitting shall thereupon after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered, and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon.

Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided such justice shall, upon motion of either party, after notice and hearing take account of all receipts and expenditures, properly had or incurred by the company, from and after said 1st day of January 1952, 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 fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said company used and usable in supplying water facilities in the town of Richmond or elsewhere 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, 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, ap-

point 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. 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 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 purposes 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 reimbursing said town, in acquiring the aforesaid properties, privileges and franchises of the Richmond Water Company its successors or assigns, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water and sewerage and drainage 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 provisions of sections 132 and 133 of chapter 49 of the revised statutes, 1944, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks and exempt from taxation.

Sec. 14. Property, tax exempt. The property of said Richmond Utilities District shall be exempt from all taxation in the town of Richmond.

Sec. 15. Execution of instruments. Any and all instruments to be executed by the district may, upon authorization by the board of trustees, be executed in its behalf by its president and treasurer who may impress its corporate seal and make any necessary acknowledgment thereof, except that upon interest coupons attached to any bonds to be issued the facsimile signature of the treasurer shall be sufficient.

Sec. 16. 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 subject to approval of the public utili-

ties commission. Said rates shall be so established as to provide revenue for the following purposes:

I. To pay the current expenses for operating and maintaining the water and sewer system.

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

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed 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.

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

Sec. 17. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sec. 18. Local referendum for town of Richmond; meeting, how called; form of ballot; certificate to secretary of state. This act shall take effect, except as hereinafter provided, when approved by a majority of the legal voters of said proposed district present and voting for or against the acceptance of the district as hereinafter provided for in this section at the next annual town meeting or at a special town meeting, called and held at the regular voting places of the town by the officers of the town of Richmond authorized to call such meetings, called before that time and after this act shall become a law, but if and only if the total number of votes cast for and against the acceptance of this act in said election equals or exceeds 20% of the total vote for all candidates for governor cast in said town at the previous gubernatorial election. Such election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of registration in said town of Richmond shall not be required to prepare for posting nor 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. The town clerk shall reduce the subject of this act to the following question: "Shall the act creating the Richmond Utilities District be accepted?" and the voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. A check list shall be used at such election. 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 company is acquired. If said utilities district shall fail to purchase or file its petition to take by eminent domain before July 1, 1952, as in this act provided, the plant, property, franchises, rights and privileges owned by the Richmond Water Company and used or usable in supplying water in the town of Richmond, then this act shall become null and void.

Sec. 20. Act effective 90 days after adjournment of legislature for purposes of local referendum. This act shall take effect in 90 days after the final adjournment of the legislature, so far as necessary to empower the calling and holding of the special election authorized in section 18.

Sec. 21. Successors or assigns of the aforesaid company. It is specially authorized by this act that the said utilities district shall have the right to acquire by purchase or otherwise the franchises and properties of the aforesaid company or their successors or assigns.

Sec. 22. 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 40 of the revised statutes and all acts amendatory thereof or additional thereto.