

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. 445

H. P. 756

House of Representatives, February 2, 1951

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

HARVEY R. PEASE, Clerk

Presented by Mr. Bucknam of Whiting.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-ONE

AN ACT Creating the Lubec Water and Electric District.

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

Sec. 1. Territorial limits, corporate name, powers and purposes. The inhabitants and territory within the town of Lubec, in the county of Washington, (hereinafter referred to as Lubec) shall be and hereby are constituted a body politic and corporate under the name of Lubec Water and Electric District, (hereinafter referred to as district) with all of the purposes, rights and powers to take and use water for domestic, commercial, sanitary and municipal purposes including extinguishment of fire, and to make, buy, generate, sell and distribute electricity, as conferred upon said Lubec by chapter 489 of the private and special laws of 1901 as amended by chapter 224 of the private and special laws of 1903, by chapter 60 of the private and special laws of 1915, by chapter 47 of the private and special laws of 1919, by chapter 91 of the private and special laws of 1935, and by chapter 75 of the private and special laws of 1939. So far as consistent with the subsequent provisions of this act, the foregoing rights, powers and privileges shall not be affected or modified by said subsequent provisions; provided, however, that so far as there may be any inconsistencies between the foregoing provisions and the subsequent provisions of this act, the subsequent provisions shall control.

Sec. 2. Title of utility properties of Lubec to vest in district. At the time this act takes effect, the title of Lubec to the entire plant, property and franchises, rights and privileges, including all rents, water rights, dams, reservoirs, pipes, machinery, fixtures, hydrants, tools, apparatus and appliances used in connection with its water business, and also the property, franchises, property rights, privileges and assets, including land, poles, wiring, fixtures, machinery, apparatus and appliances used or capable of being used in connection with maintaining its electrical business, together with all unexpended funds credited to said water and electric department and all bills receivable for water and electric services, shall become the property of and vest in said district in consideration of the said district assuming all of the obligations of Lubec in connection with said water and electric business and of said district paying Lubec for a term of ninety-nine years the sum of ten thousand dollars annually in quarterly payments of twenty-five hundred dollars each.

Sec. 3. Powers of district. Said district is hereby authorized, in addition to all the powers and rights conferred under section 1 hereof, to take, collect, store, flow, use, detain, distribute and convey to the town of Lubec or any part thereof water from any lake, pond, stream, or river or from any surface or underground brook, spring or vein of water in said town of Lubec and in the town of Trescott and from the Orange river in Whiting, and is also authorized to locate, construct and maintain aqueducts, pipes, conduits, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor; and erect poles and lines and do all things necessary to furnish water, light and power for public purposes and for public health, comfort and convenience of the inhabitants of said district, and to supply electric light and power to the inhabitants of the town of Lubec and to the town of Trescott and that part of Whiting known as Whiting Village.

Sec. 4. 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 and disposing of water and for rights of way and roadways to its sources of supply, power stations, reservoirs, mains, aqueducts, structures and lands, also all things necessary for supplying water as aforesaid, and for supplying electric lighting and power.

Sec. 5. Authorized to lay mains, pipes, conduits, erect pole lines, etc., through and upon public ways and across private lands. The said district is hereby authorized to lay in and through and to erect upon the streets, roads, ways and highways of the town of Lubec and other towns served by it and across private lands therein, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts, poles and wires, and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes, aqueducts, conduits or erect pole lines in any street, roadway or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 6. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in section 2 of this act, the said district in exercising, from time to time, any right of eminent domain conferred up it by law or through or under the franchise of Lubec acquired by the district 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 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 the 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.

Sec. 7. 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 Washington 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. Payment of the award shall be reported to and proven before the county commissioners who shall thereupon record the fact of such payment in the proceedings before the county commissioners. If upon final adjudication of the award and tender of the amount thereof, any person entitled thereto shall refuse acceptance thereof, said amount shall be deposited with the county commissioners for the benefit of the person entitled thereto; and such deposits shall be recorded by the county commissioners in the proceedings pursuant to said petition, and shall constitute a final acquittance of liability of the district in the premises.

Sec. 8. 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 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. 9. Board of trustees. All of the affairs of said district shall be managed by a board of trustees composed of three members who shall be bona fide residents of the town of Lubec; provided, however, that none of the members of the Lubec board of selectmen or holders of other town office shall be eligible for such office as trustee, and whenever said trustee becomes a member of said board of selectmen or is elected or appointed to and accepts other town office, he shall automatically cease to be such trustee. The 1st board of trustees shall be the commissioners now in office, who shall hold office as such trustees for the terms for which they were elected, and as their terms expire one trustee shall be elected by ballot at the annual

town meeting of Lubec in the month of March to serve for a term of three years. As soon as this act takes effect, said trustees (being the former water commissioners of Lubec) shall hold a meeting in the town of Lubec and organize by the election of a president and a clerk, adopt a corporate seal and choose a treasurer, and when necessary all other needful officers and agents, including a general manager, who with the treasurer, shall serve at their pleasure and whose compensation shall be fixed by such trustees. The said trustees shall receive such compensation for their services as may be fixed by said Lubec at a town meeting at which a trustee is elected; provided, however, until so fixed they shall receive such compensation as is now paid the water commissioners of Lubec. Whenever a vacancy occurs in the office of president, clerk, general manager or treasurer, it shall be filled promptly by said board of trustees. If a vacancy occurs in said board of trustees, said vacancy may be temporarily filled by the remaining trustees until the next March meeting of the town of Lubec, at which said meeting a trustee shall be elected for the regular term and one to fill out the term occasioned by said vacancy. Whenever any trustee ceases to be a resident of the town of Lubec, he vacates the office of trustee. Said trustees may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of the district, and may procure an office and incur such expenses as may be necessary. The treasurer and general manager shall furnish bond in such form and with such sureties as the trustees may approve.

Sec. 10. Valid contracts of present companies to be assumed by district.

All valid contracts now existing between Lubec and any persons or corporations for supplying water, light and power, in the town of Lubec or elsewhere shall be assumed and carried out by said 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 district, through its trustees, is authorized to borrow money temporarily in an amount not to exceed \$175,000, 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, and in acquiring the aforesaid properties, privileges and franchises of Lubec, as herein provided, of securing sources of supply, taking water and land, paying damages, laying pipes, erecting poles and wires, constructing and maintaining and operating a water, and light and power distribution 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, maturing at one time or in uniform or varying installments with or without call provisions and at or without any premium. Any notes or bonds issued pursuant to this section shall be senior to any indebtedness created under section 3 of this act. 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. 12. Property, tax exempt. The property of said district shall be exempt from all taxation in the town of Lubec.

Sec. 13. 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. 14. Rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to 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 the approval of the public utilities 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, light and power system.

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

III. To provide each year the sum of ten thousand dollars which shall be paid to the town of Lubec and a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, (other than that represented by the annual payment to Lubec) 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. 15. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sec. 16. Local referendum for town of Lubec; 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 the town of Lubec 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 Lubec 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 Lubec 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 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 to incorporate the Lubec Water and Electric District be accepted?" and the voters shall indicate by a cross 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. 17. Act effective 90 days after adjournment of legislature for purpose 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 16.

Sec. 18. 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 and additional thereto.