

MAINE STATE LEGISLATURE

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

Legislative Document

No. 258

H. P. 233

House of Representatives, January 29, 1953.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Call of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT to Incorporate Cumberland-North Yarmouth Water District.

Emergency preamble. Whereas, that part of the town of Cumberland commonly known as Cumberland Center, and a portion of the town of North Yarmouth lying along the county road, do not have adequate public water supply; and

Whereas, an expanded water supply is needed for adequate fire protection to serve these growing communities and to provide an adequate water supply for the domestic, sanitary, agricultural, industrial and other lawful purposes; and

Whereas, in the judgment of the legislature, these facts create an emergency within the meaning of the constitution 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. Name; purposes; territorial limits. The part of the towns of Cumberland Center and North Yarmouth, within the area hereinafter described, and the inhabitants within that area, are hereby created a body politic and corporate by the name of Cumberland-North Yarmouth Water District for the purpose of supplying the inhabitants of said district with

pure water for domestic, sanitary, agricultural, 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 40 of the revised statutes of 1944.

The area within the district is to be comprised of those sections of the towns of Cumberland and North Yarmouth bounded and described as follows:

Beginning at a point on the county road (Main street, so called) opposite the house of Byron Rawnsley and proceeding in a northerly direction along said county road, through that section of the town of Cumberland known as Cumberland Center, to the North Yarmouth town line; thence proceeding along said county road, in a northerly direction, in the town of North Yarmouth to a point on said road opposite the now existing wooden water tank owned by the Cumberland Center Water Company;

Beginning at a point on the Tuttle road where the easterly boundary of the land owned by George Burgess and the boundary of the land of Arthur Blanchard touch the said Tuttle road, and proceeding in a westerly direction to the water main on the County road;

Beginning at a point where the Blanchard road intersects said County road and proceeding in a westerly direction along said Blanchard road to a point opposite the house of William Chandler;

Beginning at a point where Farwell avenue intersects the County road and proceeding along the entire length of said Farwell avenue, thence along Prince street to Farwell avenue, meaning and intending to include that section known as Cumberland Terrace;

Beginning at a point on the Greely road where the Maine Central Railroad right of way crosses said Greely road and proceeding in a westerly direction along said Greely road to the County road;

And further meaning and intending to furnish a water supply to all persons, corporations, municipalities and others within the borders of the above-named traveled highways within the area herein described.

In the event that any new real estate developments occur within the area described, said district may supply water thereto, subject to the approval of the board of trustees, by and with the consent of the public utilities commission.

Sec. 2. Source of supply. The said district, for the purpose of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from any lake, pond, stream or underground vein of water in said towns of Cumberland or North Yarmouth.

Sec. 3. Eminent domain; pipes and reservoirs. 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 interests therein or water rights necessary for erecting and maintaining dams, wells and standpipes, for flowage, for power for pumping its water supply through its standpipes and mains, for reservoirs, for preserving aqueducts and other structures, for taking, distributing and discharging and disposing of water, for rights of way or roadways to its source of supply, dams, standpipes, reservoirs, wells, mains, aqueducts, structures and lands, for preserving the purity of the water and watershed, and for all purposes incidental thereto.

The said district is hereby authorized to lay water pipes, aqueducts and fixtures as may be necessary and convenient for its purposes in and through the streets, ways and highways within the district and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures, and whenever said district shall lay any pipes, aqueducts or fixtures in any street, road, way or highway it shall cause the same to be done with as little obstruction to public travel as practicable 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 purpose of its incorporation to erect and maintain reservoirs, wells, standpipes and other structures necessary and convenient for its corporate purposes.

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, or as provided in section 10 hereof.

Sec. 4. Procedure in eminent domain. If any person sustaining damages by any taking authorized by this act shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Cumberland 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 in crossing public utility. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the public utilities commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

Sec. 6. Board of trustees; election. Within 60 days of the time said district is accepted by the inhabitants of said district the selectmen of the town of Cumberland 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 towns of Cumberland and North Yarmouth shall be entitled to vote in said meetings and in subsequent meetings. The selectmen of the towns of Cumberland and North Yarmouth shall prepare check lists of the inhabitants of said district, residing in their respective towns, entitled to vote in said meetings. Said trustees elected at said first district meeting shall determine by lot the term of office of each trustee, so that 1 shall serve until the day of the next annual district meeting, 1 until the 2nd annual district meeting, and 1 until the 3rd annual district meeting. 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 his office. No oath of office shall be required of said trustees. In case of a vacancy by resignation, removal of his principal place of abode from said district, inability of a trustee to serve, or for any other reason, the remaining trustees shall declare a vacancy in the office of said trustee and they shall, within 30 days thereafter, call a special meeting of the inhabitants of the district, for the purpose of electing a successor trustee in the same manner as above provided for the election of trustees.

They shall choose annually a treasurer to serve for a term of 1 year, fix the treasurer's salary and fill vacancies in that office. The treasurer shall

furnish ta bond to the satisfaction and approval of said trustees, the expense of said bond to 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 Cumberland 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 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 board of selectmen of the towns of Cumberland and North Yarmouth on or before the 1st day of March of each year.

Sec. 7. District and towns authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the towns of Cumberland and North Yarmouth, for supply of water, and said towns of Cumberland and North Yarmouth are authorized to contract with it for the supply of water for municipal purposes.

Sec. 8. Annual district meeting; qualification of voters. After the acceptance of this charter, an annual meeting of the district shall be held within the district on the 1st Monday in March of each year at such hour and place as may be designated by the trustees. 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. If for any reason a legally sufficient annual meeting is not held on the day above designated, a meeting in lieu thereof may be called and held in like manner.

All persons resident in said district qualified to vote at town meetings in the towns of Cumberland and North Yarmouth shall be entitled to vote in any meeting of the district.

Ten percent of the voters qualified to vote in said district shall constitute a quorum.

Sec. 9. Trustees granted certain powers of selectmen. After the meeting of the voters of the district for acceptance of this charter, and after the

organization of the board under the provisions of section 6, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing lists of the persons qualified to vote in said district, and for that purpose they shall be in session at the place designated for holding the meeting between the hours of 10 o'clock in the forenoon and 12 o'clock noon on the secular day next before the date of every meeting, and also 2 hours before the opening of the meeting, and notice thereof shall be given in the call of the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 10. Authorized to acquire property and franchises of Cumberland Center Water Company. Said district is hereby authorized and empowered to acquire by purchase, or by exercise of the right of eminent domain, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Cumberland Center Water Company, situated in the towns of Cumberland and North Yarmouth, including all lands, water, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all appurtenant apparatus and appliances used or usable in supplying water in the town of Cumberland.

If the district acquires the Cumberland Center Water Company, all valid contracts then existing between the Cumberland Center Water Company and any person or corporation for supplying water in the district shall be assumed and carried out by the district.

Sec. 11. Procedure in case trustees and water company fail to agree upon terms of purchase. In case said trustees fail to agree with said Cumberland Center Water Company upon the purchase of the above-mentioned property, on or before December 31, 1953, said district, through its trustees aforesaid, is hereby authorized to take said plant, property and franchises, as for public use by petition therefor in the manner hereinafter provided. And said district, through its trustees, is hereby authorized on or before December 31, 1953 to file a petition in the clerk's office of the supreme judicial court for the county of Cumberland, in term time or in vacation, addressed to any judge of such court, who, after due notice to said Cumberland Center Water Company and its mortgagees, shall, after hearing and within 30 days after the date on which said petition is returnable, appoint 3 disinterested appraisers for the purpose of fixing a valuation of said plant, property and franchises. At the hearing aforesaid, said 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 hearings, 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 Cumberland, for the inspection of the petitioner, so far as they relate to the service in the towns of Cumberland and North Yarmouth, the following: 1st. Schedule showing the names, residences and water service of all its customers of the Cumberland Center Water Company on the 1st day of November, 1953, with the rates charged therefor; 2nd, copies of all contracts in force on said 1st day of November, 1953; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of November, 1953, 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 interests therein, owned or controlled on said 1st day of November, 1953, with such brief description thereof as will reasonably identify the same; 5th, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, conduits, 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; 6th, an itemized list of tools, apparatus, appliances and supplies used or useable in supplying water on said 1st day of November, 1953. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises.

At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the water mains and pipes and conduits of said water company, externally and internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by the said district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter

in question and may administer oaths; and any witness or person in charge of such books, accounts and papers, refusing to attend or to produce the same, shall be subject to the same penalties and proceedings so far as applicable as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions. The 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 November, 1953, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said district.

The reports of said appraisers or a majority of them shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice may, after notice and hearing, confirm or reject the same, or recommit it if justice requires. Before a commission is issued to said appraisers, either party may ask for instructions to said appraisers, and all questions of law arising upon said request for instructions or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property, plant and franchises of said company. Upon the confirmation of said report, the court so sitting shall, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon.

Before said plant, property and franchises are transferred in accordance with 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 Cumberland Center Water Company in respect of the territory comprising said district belonging to the period from and after said 1st day of November, 1953, and all net rents and profits accruing thereafter, 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 other terms and conditions so imposed by said court, the entire plant, property and franchises of Cumberland Center Water Company used and usable in supplying water in the towns of Cumberland and North Yarmouth shall become invested in said district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, but the proceedings shall not be discontinued except upon consent of both parties.

If any 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 and 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. 12. Authority to borrow money. For accomplishing the purposes of this act, said district, through its trustees, is authorized to borrow money from time to time, temporarily or for long terms, and to issue therefor the interest-bearing negotiable bonds and notes of the district, maturing serially or otherwise, and to make subsequent renewals of the same in whole or in part, and for said purposes and for the purpose of refunding any bonds, notes or other debt of the district and for the purpose of establishing a fund or funds therefor, and for the purpose of obtaining or providing money to pay any necessary expenses and liabilities under the provisions of this act, including expenses incurred in the creation of the district, in securing sources of supply and taking water and land, in acquiring the properties and franchises of the Cumberland Center Water Company, in paying damages, laying pipes, constructing and maintaining a water plant and making extensions, additions and improvements to same, said district, through its trustees, may from time to time issue negotiable notes and bonds of the district, to an amount necessary in the judgment of the trustees therefor,

maturing at one time or in uniform or varying instalments, with or without provisions for calling the same for payment before maturity, and in case of such call provisions with or without providing for the payment of a premium of not exceeding 5% of the principal upon such call. Said notes and bonds shall be a legal obligation of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of sections 132 and 133 of chapter 49 to the revised statutes of 1944. The said notes and bonds shall be legal investments for savings banks.

Sec. 13. Valid contracts of water company to be assumed by the district. All valid contracts now existing between the Cumberland Center Water Company and any person or corporation for supplying water in the towns of Cumberland and North Yarmouth shall, in the event of such acquisition, be assumed and carried out by said district.

Sec. 14. Property tax exempt. The property of said district shall be exempt from all taxation by the towns of Cumberland and North Yarmouth.

Sec. 15. Water rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the service used by them, and said rates shall be uniform within the territory supplied by the district, and the water rates shall be subject to the approval of the public utilities commission. Said water 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 or fiduciaries or trustees are now or hereafter allowed to hold. Provided, however, that the trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year.
4. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 16. 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. 17. Act void unless property of water company is acquired. If said district shall fail to purchase or file its petition to take by eminent domain before July 1, 1955, as in this act provided, the plant, properties, franchises, rights and privileges owned by the Cumberland Center Water Company and used and unable in supplying water in the towns of Cumberland and North Yarmouth, then this act shall become null and void.

Sec. 18. Rights conferred subject to provisions of law; saving clause. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 40 of the revised statutes of 1944 and all acts amendatory thereof or additional thereto.

Sec. 19. Local referendum for towns of Cumberland and North Yarmouth; effective date; certificate to secretary of state. In view of the emergency cited in the preamble, this act shall take effect when approved, only for the purpose of permitting its submission to the legal voters of the towns of Cumberland and North Yarmouth who are inhabitants of said district at special elections to be called by the municipal officers of the town of Cumberland and held at the regular voting place in said town; the dates of said elections to be determined by said municipal officers, but the first election shall not be later than the first day of June, 1953. The officers of the towns of Cumberland and North Yarmouth shall prepare and furnish separate check lists of such of the voters within said district as are then legal voters of said towns and reside in said district; and for this purpose the municipal officers of each town shall be in session on the 2 secular days next preceding said election, the first day to be devoted to registration of voters and the last day to enable the board to verify the correction of said lists and to complete and close up its records of said sessions. All notices, warrants and 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 at such elections. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the municipal officers shall not be required to prepare nor the town clerk to post a new list of voters. At such elections the vote shall be by ballot prepared by the town clerk of the town of Cumberland bearing the question: "Shall the Act to Incorporate Cumberland-North Yar-

mouth Water District, passed by the 96th legislature, 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.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at said election; provided that the total number of votes cast for and against the acceptance of this act equals or exceeds 20% of the total number of names on the check list of voters of said district. Failure of approval by the necessary percentage of voters shall not prevent subsequent elections to be called and conducted in the same manner as said first election.

The result of the vote shall be declared by the municipal officers of the town of Cumberland and due certificate thereof shall be filed by the town of Cumberland with the secretary of state.