

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. 495

H. P. 435

House of Representatives, February 5, 1953

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

HARVEY R. PEASE, Clerk

Presented by Mr. Jewett, Jr. of Bucksport

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE

AN ACT to Incorporate the Castine Water District.

Emergency preamble. Whereas, the system supplying water for fire protection in the town of Castine is inadequate; and

Whereas, on three occasions during the summer of 1952 the water supply has failed and it has been necessary to have an emergency supply of water brought to said town through the facilities of the United States navy; and

Whereas, additional water supply sources must be developed and major alterations, improvements and extensions made to said water supply system; and

Whereas, the quality of the water is unsatisfactory for general domestic use; and

Whereas, in the judgment of the legislature, these facts create an emergency within the meaning of the constitution of Maine and require the following legislation as immediately necessary for the preservation of public peace, health and safety; now, therefore,

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

Sec. 1. Territorial limits; name; purposes. The inhabitants and territory within the town of Castine shall be and hereby are constituted a body

politic and corporate by the name of Castine Water District for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, commercial and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is hereby authorized to take, hold, collect, store, flow, use, detain and distribute to and in the town of Castine water from any surface or underground brook, stream, spring, vein of water or other water source in said town of Castine or from such other source of supply as is approved by the public utilities commission.

Sec. 3. May exercise eminent domain. 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, in the towns of Castine and Penobscot any lands or interests in land 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.

The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the towns of Castine and Penobscot and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts, and fixtures as may be necessary and convenience for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway it shall cause the same to be done with as little obstruction as practicable to the public travel; and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes. Provided, however, nothing herein contained shall be construed as authorizing said water district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized thereto herein or by subsequent act of the legislature, or as provided in section 9 hereof.

Sec. 4. Procedure in exercising right of eminent domain and adjustment of damages. After the original acquisition for which provision is made in sections 9 and 10 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 of 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 Hancock county may have such damages assessed by them. The procedure and all subsequent proceedings and rights of appeal therefrom shall be had under the same restrictions,

conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 5. Procedure if public utility must be crossed. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing within 30 days after such consent is requested by 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. All the affairs of said district shall be managed by a board of three trustees, residents therein, who shall be appointed by the municipal officers of the town of Castine. They shall hold office as hereinafter provided and until their respective successors are appointed and qualified. Whenever the term of office of a trustee expires, the municipal officers of the town of Castine shall appoint a successor to serve the full term of 3 years and in case of any other vacancy arising from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of said district, his office as trustee shall be declared vacant. During his term of office, no selectman of said town of Castine shall serve as a member of the board of trustees of said district.

The first board of trustees shall be appointed within 10 days after the acceptance of this act by the voters of said district; 1 to serve until the first annual meeting of the district, 1 until the second and 1 until the third such meeting. Thereafter 1 member shall be appointed at the time of each annual meeting to serve for a term of 3 years. As soon as convenient after their appointment, the trustees first appointed 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 municipal officers of the town of Castine.

The compensation of the trustees shall be \$50 each 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. 7. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the town of Castine, and said town of Castine is authorized to contract with it, for the supply of water for municipal purposes.

Sec. 8. Authorized to acquire property and franchises of Castine Water Company. Said water district is hereby authorized and empowered to purchase all or any part of the capital stock of Castine Water Company, or to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Castine Water Company, situate in the town of Castine, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the town of Castine. If and when so acquired, the said district, in addition to the powers conferred by this act, shall have and enjoy and be entitled to exercise all the rights, privileges and franchises of said Castine Water Company and may do and perform any and all the acts and things authorized by the original charter of said Castine Water Company, as amended, insofar as they are not inconsistent with the provisions of this act. Said Castine Water Company is hereby authorized to sell, transfer and convey its franchises and property to said water district.

Sec. 9. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Castine Water Company upon the terms of purchase of the above mentioned property, on or before January 1, 1954, said district, through its trustees afore-said, is hereby authorized to take said plant, property and franchises, as for public use by petition therefor in the manner hereinafter provided. And said water district, through its trustees, is hereby authorized on or before July 1, 1954, to file a petition in the clerk's office of the supreme judicial court for the county of Hancock, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Castine Water Company and its 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 Hancock 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 supreme judicial court, in court time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner may fix a time at which the said Water Company shall file in the clerk's office of the supreme judicial court for the county of Hancock for the inspection of the petitioner, so far as they relate to the service in the town of Castine, the following: 1st, schedule showing the names, residences and water service of all its customers on the first day of January, 1954, with the rate charged therefor; 2nd, copies of all contracts in force on said first day of January, 1954; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said first day of January, 1954, and all operating expenses and fixed charges, paid or incurred during such period and property chargeable thereto; 4th, a memorandum of all real estate, water rights, or interests therein, owned or controlled on said first day of January, 1954, 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, shut-off boxes, fixtures and machinery and all the physical elements in such water system, giving in detail quantities, sizes, lengths and specifying the streets, roads or ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of January, 1954. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the mains and pipes of the said Water Company, externally or internally, in the presence of the officers or agents of said Water Company, the entire expense thereof to be borne by said water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, ac-

counts 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 first day of January, 1954, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or a majority of them, shall 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 question 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, 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 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 the 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 Castine Water Company, from and after said first day of January, 1954, 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 performance of all the other terms and conditions so imposed by said court, the plant, property and franchises of Castine Water Company within the town of Castine used or usable in supplying water in the town of Castine shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

Sec. 10. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Castine Water Company and any person or corporations for supplying water in the town of Castine shall be assumed and carried out by said Castine Water District.

Sec. 11. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks. For accomplishing the purposes of this act, said water district, through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest-bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the aforesaid properties and franchises of the Castine Water Company, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi-municipal corporation within the provisions of sections 132 and 133 of chapter 49 of the revised statutes of 1944, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 12. Property tax exempt. The property of said district shall be exempt from all taxation in the town of Castine.

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

1. To pay current expenses for operating and maintaining the water system, and provide for such extensions and renewals as may become necessary.

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 obligation 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.

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

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

Sec. 15. Local referendum for the town of Castine; meeting; how called; certificate to secretary of state. This act shall take effect except as hereinafter provided when accepted at an election specially called and held for the purpose, but only if the total number of votes cast for and against acceptance of this act in said special election equals or exceeds 20% of the total number of names on the check list of voters of said district provided for herein, which check list shall be used at such election; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections. Said elections shall be called by the municipal officers of the town of Castine and shall be held at the regular voting place in the town; the dates of said elections shall be determined by said municipal officers but the first such meeting shall be held prior to January 1, 1954. The municipal

officers shall prepare and furnish separate check lists for such of the voters within said district as are then legal voters of said town and reside in said district, and all notices, warrants or other proceedings shall be varied accordingly so as to show that only such voters as reside in said district as aforesaid are entitled to vote upon the above question. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the municipal officers shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said municipal officers shall be in session on the secular day next preceding said election, and on the day of said election until the polls are closed, the days to be devoted to registration of voters and to the verification and correction of said lists and to complete and close up its records of said session. Absent voting ballots shall not be used. The town clerk shall reduce the subject matter of this act to the following question: "Shall the act to create the Castine Water 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. 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. 16. Separability. It is the intention to confer the whole or any part of the powers herein provided for, and if any of the powers or provisions, or part thereof, are for any reason illegal, the remaining powers or provisions, or part thereof, shall remain in full force and effect.

Sec. 17. Act void unless property of water company is acquired. If said water district shall fail to purchase or file its petition to take by eminent domain, before July 1, 1954, as in this act provided, the plant properties, franchises, rights and privileges owned by the Castine Water Company and used or usable in supplying water in the town of Castine, then this act shall become null and void.

Sec. 18. Costs and expenses of taking, directed by court. All costs and expenses of the taking of the property of the Castine Water Company arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by section 9.

Sec. 19. 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 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. 20. Emergency clause. In view of the emergency cited in the preamble hereof, this act shall take effect upon approval, subject to the provisions of section 15.