

MAINE STATE LEGISLATURE

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

Legislative Document

No. 1223

H. P. 1048

House of Representatives, March 8, 1955

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

HARVEY R. PEASE, Clerk

Presented by Mr. Stanwood of Steuben.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-FIVE

AN ACT to Create the Milbridge Sewer and Water District.

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 Milbridge in the county of Washington shall be and hereby are constituted a body politic and corporate under the name of the "Milbridge Sewer and Water District" for the purpose of supplying the town of Milbridge 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 fire, and of supplying the town of Milbridge and the inhabitants of said town or any part of said town with suitable and adequate sewerage facilities.

Sec. 2. Powers of said Milbridge Sewer and Water District. Said Milbridge Sewer and Water District is hereby authorized for the purposes above aforesaid to take, collect, store, flow, use, detain, distribute and convey to the town of Milbridge or any part thereof, water from any lake, pond, stream or brook and its tributaries in the town of Milbridge and in the town of Steuben, spring or vein of water in said towns of Milbridge and Steuben, and is also authorized to locate, construct and maintain cribs, reservoirs, aqueducts, pipes, conduits, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor, and to 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.

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 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 shed, 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, its dams, power stations, reservoirs, mains, aqueducts, structures and lands. The said district may, for the purposes outlined in this section, 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.

Sec. 4. Authorized to lay mains, pipes, conduits, etc., 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 Milbridge 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 or aqueducts in any street, road, way or highway it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Procedure as to the exercise of right of eminent domain. In exercising the rights of eminent domain that are herein conferred upon said district, the district shall file for record in the registry of deeds in said county plans of the location of lands or interest therein to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any act which would have been justified if the original taking had been lawful. No entry shall be made on any private lands except to make surveys until the expiration of 10 days from such filing, whereupon possession may be had of all such lands or interest therein so taken, but title thereto shall not vest in the district until paid for.

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 therefore, 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.

Sec. 7. 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 super-

vision and to the satisfaction of such public utility, but at the expense of the district.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of 3 trustees, residents of the town of Milbridge, who shall be appointed by the municipal officers of Milbridge, but none of the selectmen of said town shall be appointed to the board of trustees. They shall hold office for terms of 1, 2 and 3 years and until their respective successors are appointed and qualified; except, however, as hereinafter provided.

Sec. 9. Trustees; how appointed; meetings; officers; vacancies filled for the unexpired term. The first board of trustees shall be appointed within 3 days after the meeting of the voters of said district to accept this act, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafterward, in the month of March in each year, 1 member shall be appointed by the municipal officers of the town to serve for the term of 3 years. As soon as convenient after the trustees are first appointed, the trustees shall hold a meeting at some convenient place in the district to be called by any member thereof in writing, designating the time and place and delivered in hand to the other 2 members, not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by the election of a chairman and clerk from their own number, adopt a corporate seal and by-laws, and perform any 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 of trustees shall be eligible to any office under the board, but shall not receive any compensation therefor except as trustees.

The compensation of the trustees shall be \$50 each per year, unless otherwise provided by vote as above set forth.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk pro tempore. They shall make and publish an annual report, which shall also contain a report of the treasurer.

Whenever a vacancy arises in the board of trustees from any cause, it shall be filled for the unexpired term by the municipal officers of the town of Milbridge.

When any trustee ceases to be a resident of said district, his office as trustee shall be declared vacant.

Sec. 10. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the town of Milbridge, which town is authorized to contract with it for the supply of water for municipal purposes.

Sec. 11. Authorized to acquire property and franchises of Milbridge Water Company. Said sewer and water district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which

right is hereby expressly delegated to said district for the said purpose, the entire plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Milbridge Water Company, 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 owns of Milbridge and Steuben. Said company is hereby authorized to sell, transfer and convey its franchises and property to said district.

Sec. 12. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Milbridge Water Company upon the terms of purchase of the above mentioned property, on or before January 1, 1958, 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 sewer and water district, through its trustees, is hereby authorized on or before July 1, 1959, to file a petition in the clerk's office of the supreme judicial court for the county of Washington, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Milbridge 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 Washington 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, said 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 Washington for the inspection of the petitioner, so far as they relate to the service in the town of Milbridge, the following:

1st, schedule showing the names, residences and water service of all its customers on the 1st day of January, next preceding the date of filing the petition, with the rate charged therefor;

2nd, copies of all contracts in force on said 1st day of January;

3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of January, 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 interest therein, owned or controlled on said 1st day of January, 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 ma-

chinery 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 1st day of January.

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 sewer and water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any 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 action. 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. In fixing such valuation, the appraisers shall make full allowance to the Milbridge Water Company for all damages occasioned to it by the severance of the plant, property and franchises so taken from the plant, property and franchises which are now owned, enjoyed and exercised by the Milbridge Water Company under its present charter. The said 1st day of January, next preceding the date of filing of the petition, 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 sewer and 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 questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property, plant and franchise 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 clearer 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 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 Milbridge Water Company from and after said 1st day of January, and all net rents and profits accruing thereafter, and 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 other terms and conditions so imposed by said court, the portion of plant, property and franchises of Milbridge Water Company within the towns of Milbridge and Steuben, used and usable in supplying water in the said town of Milbridge, shall become vested in said sewer and 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. 13. Valid contracts of water company to be assumed by district. All valid contracts now existing between the Milbridge Water Company and any person or corporations for supplying water in the town of Milbridge shall be assumed and carried out by said Milbridge Sewer and Water District.

Sec. 14. 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 sewer and 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, and 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 Milbridge 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 therefore. Said notes and bonds shall be legal obligations of said sewer and water district, which is hereby declared to be a quasi-municipal corporation within the provisions of sections 136 and 137 of chapter 53 of the revised statutes of 1954, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 15. Property tax exempt. The property of said district shall be exempt from all taxation in the town of Milbridge.

Sec. 16. 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 the current expenses for operating and maintaining the water and sewer 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 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. 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 thereby created.

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 44 of the revised statutes of 1954 and all acts amendatory thereof or additional thereto.

Referendum; meeting, how called; form of ballot; certificate to Secretary of State. This act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of said proposed district at an election to be specially called and held for the purpose by the municipal officers of the town of Milbridge, to be held at the voting place in said town, the date of holding said election to be determined by said municipal officers but to be not later than November 1, 1957. Such special 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 Milbridge 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 prepare the required ballots, upon which he shall reduce the subject matter of this act to the following question: "Shall 'An Act to Create the Milbridge Sewer and Water District,' passed by the 97th 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 the total number of votes cast for and against the acceptance of this act equaled or exceeded 20% of the total vote for all candidates for Governor cast in said district at the next preceding gubernatorial election.

The result of the vote shall be declared by the municipal officers of the town of Milbridge and due certificate thereof filed by the clerk of said town with the Secretary of State.