

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

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

Legislative Document

No. 70

H. P. 54

House of Representatives, January 16, 1957.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Quinn of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT to Create the Bangor Water District.

Emergency preamble. Whereas, the source of water for public use in the City of Bangor is the Penobscot River; and

Whereas, the quality of that source is such as to require increasingly excessive chemical treatment; and

Whereas, continuing deterioration of the water source could present very serious health problems in the City of Bangor; and

Whereas, it is vitally important that the legal voters of said city be given a timely opportunity to accept this act; 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 the 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; purpose; authority. The territory and people comprising the city of Bangor shall constitute and are hereby created a body politic and corporate under the name of "Bangor Water District." The purposes of this district shall be to supply the inhabitants of the district with pure water for fire prevention and protection purposes, and also for domestic, sanitary, commercial, industrial and other lawful purposes; to take over, control, manage and operate the water system now owned by the said city of Bangor with all appurtenances thereto; to extend, increase, enlarge and improve said

system and generally to provide a water system for proper purposes and for the health, comfort and convenience of the inhabitants of said district.

Upon the acceptance of this act by referendum ballot as provided in section 14, and upon the election, qualification and organization of the board of trustees of this district, title to said water system and its appurtenances shall pass to and vest in said district and said district shall operate and maintain the same with all the powers hereby granted and with all the powers now authorized to the city of Bangor, but subject to all the duties now or hereafter imposed by law, and further subject to all the duties and obligations of the city of Bangor with respect thereto, which duties and obligations of the city of Bangor are to be assumed by said district; and thereupon the powers and duties of the city of Bangor and of its water board in respect to said water system shall cease and terminate and the terms of office of the members of said board shall thereupon terminate and any vacancies created in the membership of said board need not thereafter again be filled.

For all purposes of this act the water system and appurtenances thereto shall include, without being limited to, the pumping facilities, filter plant and stand-pipes and all real estate contiguous to said properties and used in connection with the operation of said water system; all other lots of land and buildings of said city used in connection with said water system and not primarily used for other purposes; and all water mains, pipes, conduits, flowage rights and easements. Nothing herein contained shall pass title to or be construed to pass title to the Bangor Dam and dam site or any of the electric generating machinery and equipment of the city of Bangor, including but not limited to generators and transmission lines which may be located in, upon or attached to any of the land or buildings, title to which passes to the district hereunder, or to any of its radio transmission or receiving facilities and equipment, located as aforesaid, and the city of Bangor shall continue to have the full right, without obligation to the district, to use, operate, manage, control and enjoy its said machinery and equipment in the same general manner and at the same general location as they are now used, operated, managed, controlled and enjoyed.

The district herein created shall pay to the city of Bangor at such times and in such amounts as shall be required to meet interest and principal payments on City of Bangor $1\frac{3}{8}\%$ series bonds dated October 1, 1952, due October 1, 1956-1962, inclusive, and City of Bangor $1\frac{1}{2}\%$ series bonds dated December 1, 1954, due December 1, 1956-1964, inclusive.

It is further expressly provided that the trustees may not sell or otherwise dispose of the water system or of any part thereof which will prevent the operation of the system as a whole without the prior approval of the inhabitants of the district at an election duly called and held for such purpose.

Upon the acceptance of this act and upon the election, qualification and organization of the board of trustees as aforesaid, the city of Bangor is authorized to execute and deliver to the district such deeds and other instruments as may be necessary or desirable to disclose of record a conveyance of title to said district of said water system and its appurtenances as aforesaid.

Sec. 2. Source of supply. The said district, for the purposes of its incorporation, is hereby authorized and empowered to purchase, take, hold, divert, use and distribute water from Floods pond, Burnt pond, Little Burnt pond, Spectacle pond, Beech Hill pond, Mountainy pond, Snowshoe pond, and Fitts pond in the counties of Penobscot and Hancock, as the case may be, or any of them. Until such time as a water supply may be available from one or more of the ponds heretofore named, the District is authorized to take, hold, divert, use and distribute water from the Penobscot River.

Sec. 3. Contracts for supplying water. Said district is hereby authorized and empowered to make contracts for the supply of pure water with the city of Bangor, the inhabitants thereof, and/or any other town, city, corporation or district, and the inhabitants thereof, as may, consistent with the needs of the inhabitants of the district hereby created, wish to purchase water.

Sec. 4. Power of eminent domain; construction of facilities. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as and for public uses, by purchase, lease, or otherwise, including the right of eminent domain, which right is hereby expressly delegated to said district for said purposes, any real estate or interests therein or water rights necessary for erecting and maintaining a central water supply system, for erecting and maintaining dams, for flowage, for plants and works, for laying and maintaining mains, aqueducts, and other structures, for pumping, for supplying water through its mains, for preserving the purity of the water and watershed, for taking, distributing, discharging and disposing of water, and for rights of way or roadways to its sources of supply, dams, reservoirs, mains, aqueducts, structures and lands, and without being limited by the foregoing, for such other purposes as may be necessary, convenient and proper for the purposes of the corporation. 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, municipal corporation, quasi-municipal 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.

The said district is hereby authorized to lay in and through such streets, roads, ways and highways, and across such private lands as may be necessary and convenient for the purposes of the district hereby created, and to use, maintain, repair and replace all such pipes, aqueducts, mains, conduits and fixtures as may be necessary or 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 as good condition as near as may be as prior to the removal.

The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and, without being limited by the foregoing, structures necessary and convenient for its corporate purposes.

Sec. 5. Eminent domain and adjustment of damages. The said district in exercising, from time to time, any right of eminent domain conferred upon it by law 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 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. Entry may be made on any private lands prior to the filing of any such application for the purpose of making surveys, the district being liable for any damage resulting from such entry. Possession by the district may be had of the property described in the certificate of the Commission forthwith upon the filing of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made or tendered.

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 the county in which such property lies, may have such damages assessed by them. The procedure and all subsequent proceedings and right 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. 6. Procedure if public utility is crossed. In case of any crossing of the property 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, if it finds that a reasonable necessity exists for such crossing, 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 reasonable satisfaction of such public utility, but at the expense of the district.

Sec. 7. Board of trustees, how elected; meetings; vacancies, how filled. All the affairs of said district shall be determined and managed by a board of 7 trustees, who shall be residents of said district, appointed by the city council of the city of Bangor and 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 city council of said Bangor shall appoint a successor to serve the full term of 3 years and any other vacancy arising from any cause 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. No member of the Bangor city council shall serve as a member of the board of trustees of the district and all trustees shall serve without compensation.

The first board of trustees shall be appointed within 30 days after the acceptance of this act by the voters of said district, 2 to serve until the 1st Monday in January next following the acceptance of this act, 2 to serve until the 2nd such 1st Monday in January next following the acceptance of this act and 3 to serve until the 3rd such 1st Monday in January next following the acceptance of this act. Thereafter, members shall be appointed 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 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement and waiver 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. As necessary, they may choose agents and other needful officers who shall serve at their pleasure, and whose compensation shall be fixed by said 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 a bond executed in such sum by a surety company as trustees may approve, and the expense of securing the bond is to be borne by the district.

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.

Sec. 8. 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, with the approval of the Public Utilities Commission, to borrow money from time to time, and to issue therefor the interest-bearing negotiable 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 notes, bonds or other lawful indebtedness to establish a fund therefor. For the purpose of obtaining or providing money to pay or to meet any necessary expenses and liabilities under the provisions of this act, including construction expenses in securing sources of supply, taking water and land, paying damages, laying pipes, and making major 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 and payable at such time or times, in uniform or varying installments, with or without such call provisions, and with or without such a premium or premiums, as said trustees shall determine. Said notes and bonds shall be legal obligations of said district, which is

hereby declared to be a quasi-municipal corporation within the meaning of sections 136 and 137 of chapter 53 of the Revised Statutes of 1954. The said notes and bonds shall be legal investments for savings banks.

All bonds or notes issued by said district shall bear the district seal and shall be signed by the treasurer and countersigned by the chairman of the board of trustees of said district and if coupon bonds be issued, each coupon shall bear the facsimile signature of the treasurer.

Sec. 9. Property tax exempt. The property of said district, wherever located, shall be exempt from taxation.

Sec. 10. Water rates; application of revenue; sinking fund. Water rates shall be uniform for all classes of consumers within the district and shall be subject to approval of the Public Utilities Commission. Said rates shall be so established as to provide revenue for the following purposes:

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

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

III. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. Provided, however, that the trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year;

IV. If any surplus remains at the end of the calendar year, it may be transferred to the sinking fund, or used for such other purposes of the district as the trustees may determine upon.

Sec. 11. Incidental rights and privileges. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the district hereby created.

Sec. 12. Effect on existing statutes. All acts and portions of acts, whether public or private, which are inconsistent herewith are hereby repealed to the extent they have application to the district hereby created; provided, however, that 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.

Sec. 13. Saving clause. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 14. Emergency clause; referendum; effective date. 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 proposed district at regular or special elections called by the municipal officers of the city of Bangor and held at the regular voting places in said city. The date of said election shall not be later than the 1st day of December, 1957. If the act fails of approval, a second election may be similarly called and held for the same purpose in said city during the calendar year of 1958.

Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of registration shall not be required to prepare for posting, nor the city clerk to post, a new list of voters. For the purpose of registration of voters said board of registration shall be in session on the 3 secular days next preceding said special election, the 1st and 2nd days to be devoted to registration of voters and the last day to enable the board to verify the correctness of said lists and to complete and close up its records of said session. A check list shall be used at such election. The city clerk shall prepare the required ballots, on which he shall reduce the subject matter of this act to the following question: "Shall the Act to Create the Bangor Water District, passed by the 98th 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. A failure of approval shall not prevent the municipal officers of said city of Bangor from again submitting said question to the voters of said district in the manner aforesaid.

The result of such elections shall be declared by the municipal officers of said city of Bangor and due certificate thereof shall be filed by the city clerk with the Secretary of State.

This act shall take effect for all purposes hereof immediately upon its acceptance by a majority of the legal voters voting at such election; but only if the total number of votes cast for and against the acceptance of this act at said election equals or exceeds 20% of the total vote for all candidates for Governor cast in said city at the next preceding gubernatorial election.