

MAINE STATE LEGISLATURE

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NINETY - EIGHTH LEGISLATURE

Legislative Document

No. 512

H. P. 383

House of Representatives, February 6, 1957.

Referred to the 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-SEVEN

AN ACT to Incorporate the Cumberland Water District.

Emergency preamble. Whereas, the existing water facilities in the Town of Cumberland are inadequate for the needs of the inhabitants of said town; and

Whereas, this condition constitutes a menace to the health, welfare and safety of the inhabitants of said town; and

Whereas, it is necessary to take immediate steps to alleviate the said condition; 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; purposes. That part of the Town of Cumberland within the area hereinafter described, and the inhabitants of the Town of Cumberland within that area, are hereby created a body politic and corporate under the name of "Cumberland Water District" for the purposes of supplying inhabitants and others in the district and the Town of Cumberland with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes. All incidental rights, powers and privileges, necessary to the accomplishment of the main objects herein set forth, are hereby granted to the said Cumberland Water District.

The area within said Town of Cumberland comprising the said district is bounded and described as follows:

Starting at a point on the Falmouth-Cumberland town line in the center of the so-called West Falmouth Road; thence following said town line souther-

ly to the right-of-way of the Boston and Maine Railroad Company; thence northerly along the westerly edge of said right-of-way to a point 200 feet on the northerly side of the Greeley Road; thence westerly along the northerly line of the Town of Cumberland, being the southerly line of the Town of Yarmouth and of the Town of North Yarmouth, to Main Street; thence northerly along the Greeley Road to a point 6,500 feet north of the junction of Greeley Road and Main Street; thence southerly to a point 200 feet south of the Blanchard Road and 200 feet west of the Ridge Road; thence to the point of beginning.

Sec. 2. Powers. The said district for the purposes of its incorporation is hereby authorized to take, hold, divert, use and distribute water from any river, lake, pond, stream, brook, spring, well or other source, natural or artificial, in said Town of Cumberland.

Sec. 3. Eminent domain. The said district, for the purposes of its incorporation, is hereby authorized to take and hold as for public uses, real estate and personal estate and any interest therein necessary for such purposes, by purchase, lease or otherwise, and is hereby authorized to exercise the right of eminent domain as hereinafter provided, to acquire for such purposes any lands or interest therein or water rights necessary for erecting and maintaining dams, plants and works, for flowage for power, for pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts and other structures for taking, distributing, discharging and disposing of water, for forming basins and reservoirs, for erection of buildings for pumping works for use therein, for laying pipes and maintaining same, and for laying and maintaining conduits for carrying, collecting and discharging water, for filtering, rectifying and treating plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures, plants, works, facilities and lands.

The said district is hereby authorized to lay in and through the streets, roads, ways and highways within the district area in the town, 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 any of its corporate purposes and authorities, and whenever said district shall lay or install any pipes, aqueducts or fixtures 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 so replaced as to leave the surface in proper condition.

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.

Sec. 4. Procedure in exercising right of eminent domain; assessment of damages; appeal procedure. In exercising any rights of eminent domain that are herein conferred upon said district, the district shall file for record in the Registry of Deeds in Cumberland 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, whereon possession may be had of all such lands or interest therein so taken, but title thereto shall not vest in said district until paid for.

If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Cumberland County, may have said damages assessed by them. The procedure and all subsequent proceedings, conditions and limitations as are or may be prescribed in the case of damages by 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 upon petition by the district 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 or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 6. Board of trustees; elections; meetings; officers; vacancies. All the affairs of said district shall be managed by a board of 3 trustees, resident therein, who shall be appointed by the municipal officers of the town of Cumberland. 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 Cumberland shall appoint a successor to serve the full terms 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 resident of said district, his office as trustee shall be declared vacant. During his term of office, no selectman of said town of Cumberland shall serve as a member of the board of trustees of the district.

The first board of trustees shall be appointed within 10 days after the acceptance of this act by the voters of said district, one to serve until the 1st

annual meeting of the district, one until the 2nd and one until the 3rd such meeting. Thereafter, one 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 and waive such notice in writing. 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, and fill vacancies in that office. The treasurer shall furnish a bond, issued in such sum and by a surety company as approved by the trustees, and the expense of securing the bond is to be borne by the district. Members of the board shall be eligible to any office under the board, but shall not receive compensation therefor, except as trustee, unless authorized by vote of the municipal officers of the town of Cumberland.

The compensation of the trustees shall be \$200 each per year. 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 tempore. They shall make and publish an annual report, which shall also contain a report of the treasurer.

Sec. 7. Annual meeting of district; qualification of voters of district. After the acceptance of this charter and the organization of the board, the annual meeting of the district shall be held within the district on the 1st Monday of each March, at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. 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. Ten per cent of the voters qualified to vote in such meetings shall constitute a quorum. If for any reason a legally sufficient annual meeting is not held on the above date, a special meeting in lieu thereof may be called in like manner to be held within 3 months from said date. A complete report of the doings of the district shall be rendered at each annual meeting by the Board of Trustees including a financial report.

All persons resident in said district and qualified to vote for Governor under the laws of this State shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

Sec. 8. 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 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 the same authority as moderators of town meetings.

Sec. 9. District and town authorized to make contracts. Said district, through its trustees, is authorized to contract with persons and corporations, including the town of Cumberland, and said town of Cumberland is authorized to contract with it, for the supply of water for municipal purposes.

Sec. 10. Authorized to acquire property of Cumberland Water Company. The said district, through its trustees, is hereby authorized to acquire by purchase all or part of the entire plant, properties, franchises, rights and privileges owned by Cumberland Water Company located within the area of the Cumberland Water District, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the town of Cumberland and said company is hereby authorized to sell, transfer and convey its said plants, properties, franchises, rights and privileges to said district. Said district is also hereby authorized to acquire by purchase the stock of said Cumberland Water Company.

Sec. 11. Procedure in case Trustees and Cumberland Water Company fail to agree on terms of purchase. In case the said Trustees fail to agree with the Cumberland Water Company upon terms of purchase on or before January 1, 1958, then said Water District, through its Trustees aforesaid, is hereby authorized to take said properties, interest and franchises of the said Cumberland Water Company as set forth in section 10 herein in the manner hereinafter provided wherein the Cumberland Water Company and its mortgagees, if any, or those having an interest in any realty which is of record, shall be the parties defendant. Said Water District, through its trustees, is hereby authorized on or before January 15, 1958, to file a petition in the Clerk's Office of the Superior Court for the County of Cumberland, addressed to any Justice thereof who after notice to said Defendant aforesaid, shall, after hearing and within 60 days after the filing of said petition, appoint 3 district appraisers for the purpose of fixing the valuations of the plant property and franchises of said Cumberland Water Company described in section 10 herein. The Court may order under proper terms the production for inspection by the Trustees or the said appraisers all books and papers pertaining to the issue on petition for same by the petitioner unless same are voluntarily produced. The said appraisers shall have the power to administer oaths. The appraisers so appointed shall after due notice and hearing fix the valuation as of January 1, 1958, of said plants, properties and franchises at what they were fairly and equitably worth so that said water company shall receive just compensation for same. The report of said appraisers or of a majority of them, together with the report of a stenographer certified by the appraisers as correct, shall be filed in said Clerk's Office within 3 months after their appointment and any Justice of the Superior Court may after notice and hearing confirm or reject the same or recommit if justice so requires. Upon the confirmation of said report, the Court so sitting shall thereupon make final decree upon the entire matter including the applica-

tion of the purchase money and transfer of the property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of facts by said Court and the appraisers shall be final, but any party aggrieved may take exceptions as to any matters of law, 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 by the Clerk to the parties and said exceptions so claims 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 of such exceptions and there heard unless otherwise agreed or the Law Court for good cause shall order further time for hearing thereon. On payment or tender by said District of the amount determined by the final decree and the performance of all other terms and conditions imposed by said Court, the said plant, properties and franchises of Cumberland Water Company as described in Section 10 herein shall become vested in said Cumberland Water District.

Sec. 12. Authorized to borrow money, to issue bonds and notes. For accomplishing the purposes of this act, and for such other expenses as may be necessary for the carrying out of said purposes, said district, through its trustees, without district vote, is authorized to borrow money temporarily and to issue therefore its negotiable notes; and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including organizational and other necessary expenses and liabilities whether incurred by the district or by the town of Cumberland, the district being authorized to reimburse said town of Cumberland for any such expenses incurred by it, and in acquiring properties, paying damages, laying pipes, mains, aqueducts and conduits, constructing, maintaining and operating a water plant or system and making renewals, additions, extensions and improvements to the same; and to cover interest payments during the period of construction, said district, through its trustees, without district vote, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine.

Said bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine, but none of them shall run for a longer period than 25 years from the date of original issue thereof. Bonds, notes or evidences of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Cumberland Water District," shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile signature of the treasurer.

All such bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is hereby declared to be a quasi-municipal corporation within the meaning of section 136 of chapter 53 of the Revised Statutes of 1954 and all provisions of said section shall be applicable thereto. The said district may refund and reissue, from time to time, in one or in separate series, its bonds, notes and other evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by said district shall be legal investments for savings banks in the State of Maine and shall be tax exempt.

Sec. 13. Property tax exempt. The property, both real and personal, rights and franchises of said district shall be forever exempt from taxation.

Sec. 14. 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. Said rates shall be uniform within the territory supplied by the district and shall be subject to the approval of the Public Utilities Commission. Said rates shall be so established as to provide revenue for the following purposes:

I. To pay current expenses for operating and maintaining the water system and to 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 or fiduciaries or trustees in this state 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;

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

Sec. 15. 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, except those referred to in section 11, 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.

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 district at a special election or elections called and held for the purpose. Said elections

shall be called by the municipal officers of the town of Cumberland 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 not be later than the 1st day of November, 1957. The board of registration 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 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 upon the question. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding such election, the 1st and 2nd 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 its records of said session. The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Cumberland 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. This act shall take effect for all the 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 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.

The results of such elections shall be declared by the municipal officers of the town of Cumberland and due certificates thereof filed by the town clerk with the Secretary of State.