

MAINE STATE LEGISLATURE

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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. 1351

S. P. 472

In Senate, March 20, 1957

Received by unanimous consent. Referred to the Committee on Public Utilities, sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Charles of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT to Incorporate the North Yarmouth Water District.

Emergency preamble. Whereas, the existing water facilities in the town of North Yarmouth 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 conditions; 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. The inhabitants of and the territory within the town of North Yarmouth are hereby created a body politic and corporate under the name of "North Yarmouth Water District" for the purpose of supplying the inhabitants and others in the district and the town of North Yarmouth 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 North Yarmouth Water District.

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 North Yarmouth.

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 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. 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 pos-

session 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 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. 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; vacancies; compensation. All the affairs of said district shall be managed by a board of 3 trustees, who shall be residents therein and who shall be elected at the regular annual town meeting of the town of North Yarmouth in the same manner as regularly elected town officers. They shall hold office as hereinafter provided and until their respective successors are appointed and qualified. In case a vacancy occurs for any cause or reason, the remaining trustees may choose another member to serve until the next annual town election, at which time election of a trustee for the unexpired term shall also be had. When any trustee ceases to be resident of said district, his office shall be declared vacant. During his term of office, no selectman of said town of North Yarmouth shall serve as a member of the board of trustees of the district. All trustees, if residents of the district, shall be eligible for reelection.

The first board of trustees shall be appointed by the municipal officers within 10 days after the acceptance of this act by the voters of said district to hold office as follows: One to serve until the first annual town meeting following the acceptance of this act; one to serve until the second annual town meeting following the acceptance of this act; and one until the third annual town meeting following such acceptance. Thereafter, all trustees shall be elected as hereinbefore provided for a term of 3 years.

As soon as convenient after their appointment, the first board of 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 electing from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer. They shall adopt a corporate seal and may adopt by-laws and perform any other acts within the powers delegated to them by law. Following each annual meeting of said district, the trus-

tees shall elect from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer to serve until the next annual meeting of said district and until their respective successors are elected and qualified.

The trustees from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. Members of the board of trustees shall be eligible to any office under the board. The trustees, as such, shall receive as compensation for their services an amount to be determined by them not to exceed \$100 each per year; but the treasurer may be allowed such compensation as the trustees shall determine.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member who shall serve as clerk or clerk pro tem. They shall make and publish an annual report, including a report of the treasurer, and such report may be included in and published as part of the town report.

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 first 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 percent 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 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 North Yarmouth and said town of North Yarmouth 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 gift or purchase that portion of the plant, properties, franchises, rights and privileges owned by Cumberland Water Company located within the area of the North Yarmouth Water District, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or useable in supplying water in the town of North Yarmouth and said company, its successor or assign, is hereby authorized to give, sell, transfer and convey its said plants, properties, franchises, rights and privileges to said district. Said district is also hereby authorized to acquire by gift or purchase the stock of said Cumberland Water Company.

Sec. 11. Purchase of water requirements from Cumberland Water District. The North Yarmouth Water District is hereby authorized to purchase any or all of its water requirements from the Cumberland Water District at rates and under such conditions as may be determined by the Public Utilities Commission.

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 North Yarmouth, the district being authorized to reimburse said town of North Yarmouth 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 40 years from the date of original issue thereof; provided, however, that no more than \$100,000 of said bonds, notes and other evidences of indebtedness shall be outstanding at any one time. 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 "North Yarmouth 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 saving 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 North Yarmouth and shall be held at the regular voting place in the town; the date of said elections shall be determined by said municipal officers, but the first such meeting shall not be later than the first 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 election; 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 North Yarmouth 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.

The result of the vote in said district shall be declared by the municipal officers of the town of North Yarmouth and due certificate thereof filed by the town clerk with the Secretary of State, and if said result so filed shows that a majority of the vote is for approval of this act, it shall take complete effect; provided that the total number of votes cast for and against the acceptance of this act equals or exceeds 20% of the total vote for all candidates for Governor cast in said district at the next previous gubernatorial election; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections.