

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. 1409

H. P. 985

House of Representatives, March 26, 1957.

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

HARVEY R. PEASE, Clerk.

Presented by Mr. Jewell of Monticello.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Creating the Mars Hill Utility District.

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

Sec. 1. Territorial limits; corporate name and purpose. The inhabitants and territory within the town of Mars Hill in the county of Aroostook shall be and hereby are constituted a body politic and corporate under the name of the "Mars Hill Utility District," for the purpose of supplying the town of Mars Hill and the inhabitants of said town with pure water for domestic, commercial, sanitary and municipal purposes, including the extinguishment of fires, and of supplying the town of Mars Hill and the inhabitants of said town with suitable and adequate sewerage and sewage treatment and disposal facilities, as hereinafter provided.

Sec. 2. Powers. Said Mars Hill Utility District is hereby authorized for the purpose aforesaid to take, collect, store, flow, use, detain, distribute and convey to the town of Mars Hill or any part thereof water from any lake, pond, stream or river or from any surface or underground brook, spring or vein of water in town or near said town in the United States or Canada, and is also authorized to locate, construct and maintain aqueducts, pipes, conduits, standpipes, hydrants, pumping stations and other necessary structures and equipment therefor, and do anything necessary to furnish water, sewerage, drainage and sewer treatment and disposal for public purposes and public health, comfort and convenience of the inhabitants of towns.

Nothing herein contained shall be construed as authorizing said District to supply water as aforesaid unless and until it shall acquire the property of the Mars Hill and Blaine Water Company. No additional construction shall be un-

dertaken by the District without the approval of the inhabitants of the town of Mars Hill at any annual town meeting.

Sec. 3. Rights of eminent domain conferred. The said District, for the purpose 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 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 and roadways to its sources of supply, reservoirs, mains, aqueducts, structures and lands, also all things necessary for supplying water and furnishing sewerage and sewage treatment and disposal facilities. The District may, for the purposes outlined in this chapter, 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 and either by construction, purchase or eminent domain acquire any existing facilities. Provided, however, 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 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. 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, highways and walkways of the town of Mars Hill and other towns served by it 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. Whenever said District shall lay any pipes, aqueducts, conduits or mains in any street, roadway 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 in exercising right of eminent domain. After the original acquisition for which provision is made in sections 9 and 11, 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 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 shall thereupon 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 shall then 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 purpose of the District. 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 pur-

poses 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 of 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 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 to 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 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.

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 Aroostook 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. Payment of the award shall be reported to and proven before the county commissioners, who shall thereupon record the fact of such payment in the proceedings before the county commissioners. If upon final adjudication of the award and tender of the amount thereof, any person entitled thereto shall refuse acceptance thereof, said amount shall be deposited with the county commissioners for the benefit of the person entitled thereto; and such deposits shall be recorded by the county commissioners in the proceedings pursuant to said petition and shall constitute a final acquittance of liability of the District in the premises.

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 and 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. 8. Board of trustees. All the affairs of said District shall be managed by a board of trustees composed of 5 members, who shall be bona fide residents of the town of Mars Hill, and who shall be elected in the manner prescribed by the board of selectmen of the town of Mars Hill within 60 days after the acceptance of this act by the inhabitants of said District as hereinafter provided. No member of the board of trustees may hold any other elective office in Mars Hill and if elected to any other office he shall automatically cease to be a trustee. The term of office of a trustee shall expire whenever the term of office of the

members of the board of selectmen shall expire, with each Trustee having a 3-year term of office, two being elected in one year, two being elected the 2nd year and one each 3rd year, except that when first organized under the provisions of this act, the trustees shall be elected, two for a 1-year term, two for 2-year terms and one for a 3-year term. The treasurer of the District shall be the treasurer of the town of Mars Hill. As soon as convenient after the members of the board of trustees are elected, said trustees shall hold a meeting in the town of Mars Hill and organize by the election of a president and clerk, adopt a corporate seal and choose all other needful officers and agents when necessary, who shall serve at their pleasure and whose compensation shall be fixed by the trustees. The trustees shall meet monthly and specially as may be necessary and each shall receive compensation of \$10 for each regular or special meeting attended; provided, however, that the total annual compensation of each shall not exceed \$300. They shall publish an annual report. Whenever a vacancy occurs in the office of president or clerk, it shall be filled promptly by the board of trustees. When any trustee ceases to be a resident of the town of Mars Hill, he vacates the office of trustee. The trustees may also ordain and establish such by-laws as are necessary for their convenience and the proper management of the affairs of the District. Said trustees may procure an office and incur such expense as may be necessary. 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, except treasurer, and shall be sworn to office by the clerk of the town of Mars Hill.

Sec. 9. Authorized to acquire property and franchises of Mars Hill and Blaine Water Company. Said Mars Hill Utility District is hereby authorized and empowered to acquire by purchase or by the exercise 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 Mars Hill and Blaine Water Company, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or useable in supplying water in the territory. 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 of the rights, privileges and franchises of said Mars Hill and Blaine Water Company, and may do and perform any and all of the acts and things authorized by the original charter of the Mars Hill and Blaine Water Company insofar as they are not inconsistent with the provisions of this act.

Sec. 10. Valid contracts of present company to be assumed by District. All valid contracts now existing between the Mars Hill and Blaine Water Company and said town or other towns and any persons or corporations for supplying water in the town of Mars Hill and elsewhere shall in the event of such acquisition be assumed and carried out by the said Mars Hill Utility District.

Sec. 11. Procedure in case trustees fail to agree on terms of purchase. In case the Trustees fail to agree with the Mars Hill and Blaine Water Company upon the terms of purchase of said properties within 10 years and 6 months of the acceptance of this act by the voters of the town of Mars Hill acting as specified in the referendum to accept the provisions of this act, said District, through

its Trustees aforesaid, is hereby authorized to take the plant, property and franchises of said company for public use by petition in the manner hereinafter specified.

Said district, through its Trustees, is hereby authorized, before the expiration of 11 years from the date of the acceptance of this act by the voters of the town of Mars Hill as specified herein, to file its petition if proceedings are necessary against said company, in the clerk's office of the Superior Court for the county of Aroostook, in term time or in vacation, addressed to any Justice of said Court. The Justice so named shall, at his discretion, appoint appraisers, under such conditions and charged with such powers and duties as he deems necessary, to examine the books, ledgers, documents, accounts, bank statements, names and addresses and schedules of ratepayers, property of said company, plans, specifications and drawings relating to the condition, function or location of said property and all manner of things which the Court may deem necessary for a full understanding of the matter and for fixing a valuation of said plant, property and franchises.

The first day of June in the year in which the District shall petition the Court as stated herein 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 the District.

The Justice shall fix a reasonable time for the appraisers to make a report of their findings, which report shall be filed by a majority of the appraisers 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 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 exception 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 questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after 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 company from and after said first day of June in the year in which the District shall petition the Court as stated herein, 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 hearings shall be final. On payment or tender by said District of the amount so imposed by said Court, the entire plant, property and franchises of said Mars Hill and Blaine Water Company used and useable in supplying water and sewerage facilities in the town of Mars Hill or elsewhere shall become vested in said 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. If a vacancy occurs at any time in said board of appraisers from any cause, such sitting Justice, or in case of his inability to act, any Justice of said Court appointed by the Chief Justice may, after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require. Nothing herein contained shall preclude said district from acquiring said properties from said company at any time by mutual agreement.

Sec. 12. 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 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 reimbursing said town, in acquiring the aforesaid properties, privileges and franchises of the Mars Hill and Blaine Water Company, its successors or assigns, by purchase or otherwise, or securing sources of supply, taking water and land, paying damages, laying pipes, constructing and maintaining and operating a water, sewerage and drainage system, sewage treatment and disposal facilities 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, maturing at one time or in uniform or varying installments with or without call provisions and at or without any premium. Said notes and bonds shall be legal obligations of said 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 and exempt from taxation.

Sec. 13. Property, tax exempt. The property of said Mars Hill Utility District shall be exempt from all taxation in the town of Mars Hill.

Sec. 14. Execution of instruments. Any and all instruments to be executed by the District may, upon authorization by the board of trustees, be executed in its behalf by its president and treasurer who may impress its corporate seal and

make any necessary acknowledgment thereof, except that upon interest coupons attached to any bond to be issued, the facsimile signature of the treasurer may be sufficient.

Sec. 15. Rates, application of revenue, sinking fund. All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said District the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the District and subject to the approval of the Public Utilities Commission. Said rates shall be so established as to provide revenue for following purposes:

I. To pay the current expenses for operating and maintaining the water and sewer systems and the sewage treatment plant and disposal facilities.

II. To provide for payment of the interest on the indebtedness created or assumed 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 or assumed 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. 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. 16. Lien to secure payment of rates; procedure. There shall be a lien on real estate served by the sewers of the District to secure the payment of rates established and due under the provisions of section 15, which shall take precedence of all claims on such real estate, excepting only claims for taxes. Real estate for the purposes of this act shall bear the same definition as given in sections 4 and 5 of chapter 91-A of the Revised Statutes of 1954, as enacted by section 1 of chapter 399 of the public laws of 1955.

Sec. 17. 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 and additional thereto.

Sec. 18. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object set forth are granted to the corporation hereby created.

Sec. 19. District acquires title to the sewerage system of town of Mars Hill. The sewerage system of the town of Mars Hill, whether constructed with private or public moneys, and maintained by the town of Mars Hill, or for which the town of Mars Hill assumes the responsibility for maintenance, shall become the

property of said District upon the action of the voters of the town of Mars Hill to accept the provisions of this act as specified in the referendum.

Sec. 20. Provision for acquiring company void unless acted upon in due time. If said District shall fail to purchase or file its petition to take by eminent domain before the expiration of 11 years after the acceptance of this act by the voters of the town of Mars Hill, the provisions for the purchase or taking by eminent domain shall become null and void.

Sec. 21. Successors or assigns of the Mars Hill and Blaine Water Company. It is specially authorized by this act that the said Mars Hill Utility District shall have the right to acquire, as herein provided, the franchises and properties of the Mars Hill and Blaine Water Company, or its successors or assigns.

Referendum; effective date; 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 the town of Mars Hill at any annual town meeting held before March, 1963, called and held at the regular town meeting place of the town of Mars Hill by the town officers authorized to call such meeting, an appropriate article being inserted in the call for such meeting. A check list shall be used at the meeting.

The town clerk shall prepare the required ballots, on which he shall reduce the subject matter of this act to the following question: "Shall the Act Creating the Mars Hill Utility 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 said meeting; provided the total number of votes cast for and against the acceptance of this act at said meeting equals or exceeds 20% of the total number of votes cast for all candidates for Governor in said town at the next previous gubernatorial election.

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