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Private & Special Law

124th Legislature

First Regular Session

Chapter 20

H.P. 921 - L.D. 1318

An Act To Create the Hancock Pond Water District

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the residents of the towns of Madison and Anson are in immediate need of forming a quasi-municipal regional entity to supply potable water within those towns; 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; corporate name. Pursuant to the Maine Revised Statutes, Title 35-A, section 6403, subsection 1, paragraphs A and B and subject to section 8 of this Act, the territory and the inhabitants of the Town of Madison and the Town of Anson constitute a standard water district under the name "Hancock Pond Water District," referred to in this Act as "the district."

Sec. 2. Powers; authority; duties. Except as otherwise expressly provided in this Act, the district has all the powers and authority and is subject to all the requirements and restrictions provided in the Maine Revised Statutes, Title 35-A, chapter 64, and is authorized to perform all acts and to do all things necessary or convenient to carry out the purposes and powers provided in this Act or reasonably implied from those purposes and powers.

Sec. 3. Authority to take water and locate, construct and maintain dams, reservoirs, pipes, aqueducts and other structures and improvements. Notwithstanding any provision in the Maine Revised Statutes, Title 35-A, section 6404 to the contrary, the district has the power and authority to take, hold and convey water and to locate facilities as set forth in this section. The district is authorized to take, to hold and to convey within the Town of Madison and the Town of Anson and from any part of those towns water from any surface and groundwater source within the towns, including without limitation the Kennebec River, Wesserunsett Lake, also known as Hayden Lake, and Marshall's Pond. Pursuant to Title 35-A, section 6403, subsection 2, paragraph D, the district is authorized to take, to hold and to convey within the Town of Embden water from Hancock Pond, Sand Pond, Black Hill Pond, Mill Stream and Embden Pond and any of the tributary lakes and streams of those ponds and that stream. The district is authorized to erect, maintain and operate dams, reservoirs, gates, hydrants, standpipes and all other structures and improvements necessary or convenient for accomplishing the

purposes of this Act and to lay down, maintain and operate pipes, aqueducts and all other structures and improvements necessary or convenient for accumulating, conducting, discharging, distributing and disbursing water, for forming proper reservoirs for those purposes and for accomplishing the purposes of this Act. Pursuant to the Maine Revised Statutes, Title 35-A, section 6403, subsection 2, paragraphs F and G, the district is authorized to supply, furnish or otherwise provide water within the Town of Embden pursuant to contract and to construct, locate, acquire, equip, maintain and operate facilities and all other structures and improvements necessary or convenient for accomplishing those purposes. Pursuant to the Maine Revised Statutes, Title 35-A, section 6403, subsection 2, paragraph F, the district is authorized to lay in or through the streets and highways of the Town of Embden, and to maintain, operate, take up, repair and replace all pipes, aqueducts, fixtures and other structures and improvements within the Town of Embden necessary or convenient for accomplishing the purposes of this section.

Sec. 4. Additional powers; eminent domain. Notwithstanding the Maine Revised Statutes, Title 35-A, sections 6404, 6405, 6406, 6408, subsection 2 and 6409, the district has the powers and authority provided in this section.

The district has the power and is authorized to survey for, lay, erect and maintain suitable dams, reservoirs, aqueducts, pipes, hydrants, buildings, treatment or purification plants, pumping equipment and fixtures for flowage, power, pumping its water supply or conveying wastewater produced in the operation of a treatment or filtration facility through its mains, to enter upon any land or public way for laying, erecting and maintaining the pipes and structures and to make surveys for those purposes and to pass over, excavate and flow any lands.

The district is authorized to take and hold for public uses, by purchase, eminent domain or otherwise, any land that may be necessary for supplying, treating or purifying water, conveying wastewater, laying and maintaining its pipelines and constructing other structures, preserving the purity of its watershed and ensuring the purity of its water supply. The district is also authorized to take and hold in the same manner any land that may be necessary for rights of way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and land. The district may hold all real estate and personal property necessary or convenient for these purposes.

The district may not take by right of eminent domain any property or facilities of any other public utility used or acquired for future use in the performance of a public duty.

The district shall file in the registry of deeds for Somerset County plans and descriptions of the location of all the lands and water rights taken under the provisions of this Act and entry may not be made upon any land, except to make surveys, until the expiration of 10 days from the filing. The district may file with the plan a statement of the damages it is willing to pay to any person for any property or property rights taken. If the amount finally awarded does not exceed that sum, the district may recover costs against a person. Otherwise that person may recover costs against the district. Within 30 days after the filing of the plans and descriptions, the district shall publish notice of the taking and filing in a newspaper having circulation in the county, the publication to be continued 3 weeks successively.

Any person aggrieved by the determination of the damages awarded to owners of property or interests taken under this section may appeal, within 60 days after service of the condemnation order and check, to the Superior Court of Somerset County. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest when interest is due and for costs in favor of the entitled party. A decision of the Superior Court may be appealed to the Law Court as in other civil actions.

Sec. 5. Trustees; how elected; first board; meetings; officers. All of the affairs of the district must be managed by a board of trustees composed of 7 members: 3 residents of the Town of Madison, 3 residents of the Town of Anson and one resident of the Town of Embden.

1. First board; nominations and elections. Notwithstanding any provision in the Maine Revised Statutes, Title 35-A, section 6410, subsections 1, 2, 3 and 4, to the contrary, the nomination, appointment and election of trustees and the appointment and terms of office of the first board of trustees are authorized by this subsection. The first board of trustees of the district is appointed. Within 30 days after the date on which this Act takes effect for all purposes pursuant to section 8 of this Act, the trustees of the Madison Water District shall appoint 3 trustees who must be residents of the Town of Madison, the trustees of the Anson Water District shall appoint 3 trustees who must be residents of the Town of Anson and the municipal officers of the Town of Embden shall appoint one trustee who must be a resident of the Town of Embden.

Each trustee appointed from the Town of Madison to the first board serves an initial term specified in the appointment by the trustees of the Madison Water District as follows: one for a term that expires on November 15th of the year that is one year after the year in which the trustee was appointed, one for a term that expires on November 15th of the year that is 2 years after the year in which the trustee was appointed and one for a term that expires on November 15th of the year that is 3 years after the year in which the trustee was appointed. Each trustee appointed from the Town of Anson to the first board serves an initial term specified in the appointment by the trustees of the Anson Water District as follows: one for a term that expires on November 15th of the year that is one year after the year in which the trustee was appointed, one for a term that expires on November 15th of the year that is 2 years after the year in which the trustee was appointed and one for a term that expires on November 15th of the year that is 3 years after the year in which the trustee was appointed. The trustee appointed from the Town of Embden to the first board serves for an initial term that expires on November 15th of the year that is one year after the year in which the trustee was appointed.

When the term of office of a trustee from the Town of Madison or from the Town of Anson expires, the trustee's successor is elected at large by a plurality vote of the voters of the district. For the purpose of election, a special election must be called by the trustees and held on the date of a statewide election held in the month of November in the year in which the term of office of the trustee expires or, if there is no statewide election in November that year, on a date established by the trustees between November 1st and November 14th in the year in which the term of office of the trustee expires.

When the term of office of a trustee from the Town of Embden expires, the municipal officers of the Town of Embden shall appoint a successor trustee who must be a resident of the Town of Embden and who serves for a term that expires on November 15th of the year after the year in which the term of the predecessor trustee expires.

2. Organization; conduct of business. Except as otherwise expressly provided in this Act, the organization and powers of the board of trustees must be in accordance with the Maine Revised Statutes, Title 35-A, chapter 64.

Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 4, within 60 days after the date on which this Act takes effect for all purposes pursuant to section 8 of this Act, the trustees shall meet and organize by adopting a corporate seal and by electing a chair and a clerk from among them and by electing a treasurer who may or may not be a trustee, all to serve until November 15th of the year in which a trustee is elected pursuant to subsection 1 and until their successors are elected.

Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 5, within 30 days after November 15th of each year, the trustees of the district shall meet for the purposes of electing a chair and a clerk from among them and electing a treasurer who may or may not be a trustee, all to serve for the ensuing year and until their successors are elected.

A quorum of the board of trustees is four trustees.

3. Bylaws. The trustees may adopt and establish such bylaws as are necessary or convenient for the management of the affairs of the district.

4. Terms; eligibility requirements; vacancy. Notwithstanding any provision in the Maine Revised Statutes, Title 35-A, section 6410, subsections 1, 3 and 4 to the contrary, the terms of trustees, eligibility requirements and filling of vacancies are authorized by this subsection. Trustees from the Town of Madison and the Town of Anson serve 3-year terms. The appointed trustee from the Town of Embden serves a one-year term. The successor of a trustee who is a resident of the Town of Madison must be a resident of the Town of Madison elected by the inhabitants of the district. The successor of a trustee who is a resident of the Town of Anson must be a resident of the Town of Anson elected by the inhabitants of the district. A trustee elected in anticipation of the expiration of the term of a trustee serves for a term that expires on November 15th of the year that is 3 years after the year in which that trustee was elected. If the office of a trustee becomes vacant, the vacancy is filled in the same manner for the unexpired term by a special election called by the trustees of the district. When any trustee ceases to be a resident of the town in which the trustee resided when appointed or when nominated and elected, the trustee shall vacate the office of trustee and the vacancy must be filled as provided in this subsection. A trustee is eligible for reelection, but a person who is a municipal officer of the Town of Madison or the Town of Anson is not eligible for appointment or for nomination or election as a trustee.

Sec. 6. Finance. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6412, subsections 1 and 2 and section 6413, the district, in order to accomplish the purposes of this Act, by vote of its board of trustees and without district vote, is authorized to borrow money, including temporary borrowing, without limit, for the purposes of paying necessary expenses and liabilities incurred under this Act, acquiring properties, paying damages, laying pipes, mains, sewers, drains and conduits, purchasing, constructing, maintaining and operating a water system and making renewals, additions, extensions and improvements to that system and is authorized to issue, without limit, from time to time, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates and having such terms and provisions as the trustees determine pursuant to this Act. In the case of a vote by the trustees to authorize bonds, notes or other evidences of indebtedness to pay for the acquisition of property, the cost of a water system or part of a water system, renewals or additions or for other improvements in the nature of capital costs, for renewing or refunding existing indebtedness or to pay for maintenance, repairs or current expenses, notice of the proposed debt and of the general purpose or purposes for which it was authorized must be given by the district by publication at least once in a newspaper having circulation in the towns of Madison and Anson.

Notwithstanding the Maine Revised Statutes, Title 35-A, section 6412, subsection 4, interest or dividends paid on bonds, notes or other evidences of indebtedness issued under this Act are exempt from taxation within the State, whether or not such income is subject to taxation under the United States Internal Revenue Code, as amended.

In addition to the authority set forth in the Maine Revised Statutes, Title 35-A, section 6416, all district funds, including reserve funds and trust funds to the extent that the terms of the instrument or vote creating the fund do not prohibit, may also be deposited or invested by the treasurer under the direction of the trustees according to the requirements for the deposit or investment of municipal funds contained in the Maine Revised Statutes, Title 30-A, section 5706 and section 5712, subsections 1, 2 and 3.

Sec. 7. Transfer of assets and liabilities of the Madison Water District and the Anson Water District. The district, through its trustees, shall acquire, in accordance with this section, all of the plants, properties, assets, franchises, rights and privileges of the Madison Water District and the Anson Water District, including, without limitation, lands, buildings, waters, water rights, springs, wells, reservoirs, tanks, standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools, equipment, apparatus and appliances used or useful in supplying water for domestic, commercial, industrial and municipal purposes and shall, by appropriate instruments, assume, in accordance with this section, all of the outstanding debts, obligations and liabilities of the Madison Water District and the Anson Water District, including, without limitation, the assumption of any outstanding bonds, notes or other evidences of indebtedness of the Madison Water District and the Anson Water District that are due on or after the date of transfer.

The Madison Water District, a quasi-municipal corporation organized and existing pursuant to Private and Special Law 1913, chapter 121, as amended, and the Anson Water District, a quasi-municipal corporation organized and existing pursuant to Private and Special Law 1915, chapter 200, as amended, shall, through their respective trustees, assign, transfer and convey to the district by appropriate instruments of conveyance all, and not less than all, of their respective plants, properties, assets, franchises, rights and privileges, including, without limitation, lands, buildings, waters, water rights, springs, wells, reservoirs, tanks, standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools, equipment, apparatus and appliances used or useful in supplying water for domestic, commercial, industrial and municipal purposes, in consideration of the assumption by the district of all of the outstanding debts, obligations and liabilities of the Madison Water District and the Anson Water District, including, without limitation, the assumption of any outstanding bonds, notes or other evidences of indebtedness of the Madison Water District and the Anson Water District that are due on or after the date of transfer.

The transfer by the Madison Water District and the Anson Water District to the district of their respective plants, properties, assets, franchises, rights and privileges, the assumption by the district of all of the outstanding debts, obligations and liabilities of the Madison Water District and the Anson Water District pursuant to this section and the subsequent use of the plants, properties, assets, franchises, rights and privileges by the district within the limits of the district are subject to the approval of the Public Utilities Commission as may be required by the Maine Revised Statutes, Title 35-A, Part 1.

Promptly after completion of the transfer and assumption of assets and liabilities pursuant to this section, the Madison Water District and the Anson Water District shall cause to be filed with the Secretary of State a certificate of dissolution certifying the name of that district and that all assets of that district and all debts, obligations and liabilities of that district have been transferred to the district and that is

signed by the chair or presiding trustee of that district and by the clerk, secretary or another officer of that district. Upon the respective filing dates of the certificates of dissolution of the Madison Water District and the Anson Water District, the existence of that district ceases.

Sec. 8. Emergency clause; referendum; effective date. In view of the emergency cited in the preamble, this Act takes effect when approved only for the purpose of permitting its submission to the legal voters within the territory described in section 1 of this Act at a referendum called for that purpose and held after May 1, 2009 but within 2 years after the effective date of this Act. The referendum must be called by the municipal officers of the respective towns and must be held at the regular voting places. The referendum must be called, advertised and conducted according to the law relating to municipal elections. The registrars shall make a complete list of all the eligible voters of the proposed district as described in this Act. The list prepared by the registrars governs the eligibility of a voter. For the purpose of registration of voters, the registrars of voters must be in session the regular workday preceding the referendum. The subject matter of this Act is reduced to the following question:

"Do you favor creating the Hancock Pond Water District and permitting the Hancock Pond Water District to acquire the assets and assume the liabilities of the Madison Water District and the Anson Water District?"

The voters shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same.

The results must be declared by the municipal officers of the Town of Madison and the Town of Anson and due certificate of the results filed by the clerk with the Secretary of State.

This Act takes effect for all other purposes immediately upon its approval by a majority of the legal voters of each town voting at the referendum. Failure to achieve the necessary approval in any referendum does not prohibit subsequent referenda consistent with this section as long as the referenda are held within 2 years after the effective date of this Act.

If, after May 1, 2009 but prior to approval of this Act, a referendum on the question specified in this section is held in accordance with this section and a majority of the legal voters of each town voting at the referendum cast votes in favor of the question and due certificate of the results are filed with the Secretary of State, this Act takes effect when approved.

Effective pending referendum.