

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

H.P. 1165 - L.D. 1747

An Act to Repeal and Replace the Charter of the Yarmouth Water District

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

Sec. 1. P&SL 1923, c. 72, as amended by P&SL 2011, c. 8, §§1 and 2, is repealed and the following enacted in its place:

Sec. 1. Territorial limits, corporate name and purposes. This Act may be known and cited as "the Charter of the Yarmouth Water District." The territory and the people constituting the Town of Yarmouth and the Town of North Yarmouth in the County of Cumberland and State of Maine constitute a body politic and corporate under the name of the Yarmouth Water District, referred to in this Act as "the district," subject to adoption by the people in the territory as provided in this Act. The purpose of the district is to supply the inhabitants of the district with potable water for domestic, agricultural, commercial, industrial, sanitary and municipal purposes and to protect the watershed of the district's water supply for the benefit of the inhabitants within the district.

Sec. 2. Source of supply; authorized to erect dams, lay pipes, provide power and communications, etc.; may hold or purchase real estate; contracts. For any of the purposes set forth in this Act, or for the preservation and potability of its water, the district is authorized to take and use water from the Royal River; from any spring, pond, brook, aquifer or other source of water in the Town of Yarmouth and the Town of New Gloucester, except that the use of any source of water in the Town of New Gloucester by the district is allowed only after approval by a joint body of an equal number of representatives from both the district's board of trustees and the municipal officers of the Town of New Gloucester; or from any spring, brook, pond or aquifer or other source of water in the Town of North Yarmouth or the Town of Cumberland and to purchase water from any other water district or company. The district is authorized to conduct and distribute water through the Town of Cumberland and to conduct and distribute water into and through the Town of Yarmouth and the Town of North Yarmouth; to survey for, locate, construct, lay, erect and maintain suitable dams, wells, reservoirs, pumping stations, treatment plants and machinery, pipes, mains, aqueducts, conduits, communications, cables, wires and other necessary structures, equipment, fixtures and appurtenances; and to carry its pipes or aqueducts under, in and over the Royal River or under, in, along, over or

through any water course or body of water, bridge, street, railroad, highway or other way. The district is authorized to enter upon and excavate any street, highway or other way, in such manner as to least disturb that way, and shall leave those ways in as safe and passable condition as before the excavation; to enter, pass over and excavate any lands and to take and hold by purchase or otherwise any real estate, personal property and rights-of-way or of water; and in general to do any acts necessary, convenient or proper for carrying out any of the purposes specified in this section. The district is further authorized, for the purpose of making all needed repairs or extensions or service connections, to lay its pipes through any public or private lands or ways, with the right to enter upon the same or dig therein and to communicate with any structure and equipment. The district may not render service in territory served or authorized to be served by any other water utility unless consent to such service is first obtained from the Public Utilities Commission. The district may supply water to any other water utility for resale or any other lawful purposes. The district may contract to accomplish anything described in this section. The district, through its trustees, in order to carry out the purposes of its incorporation, may contract with persons, districts, municipalities, utilities, corporations or other lawful entities. All incidental powers, rights and privileges necessary to the accomplishment of the objectives set forth in this Act are granted to the district, including without limitation the right to receive grants or other aid from state and federal agencies for any purpose set forth in this Act.

Sec. 3. Right of eminent domain conferred. For effecting and carrying out the purposes of its incorporation, the district is authorized to take and hold as for public uses, by purchase, lease, eminent domain or otherwise, any land or interest therein or water rights necessary for erecting and maintaining dams, plants and works; for flowage, power, pumping and supplying its water supply through its mains; for reservoirs and standpipes; for preserving and protecting the potability of the water and related watershed; for laying and maintaining aqueducts and other structures; for taking, distributing, discharging and disposing of water; and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands. It is further authorized to erect, construct and maintain dams, power stations, reservoirs, mains, aqueducts, structures and roadways necessary and convenient for its purposes. Except as otherwise provided by law, 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.

Sec. 4. Adjustments of damages. The district is liable to pay all damages that are sustained by any person or corporation by the taking of any land, water or other property or by excavating through any land for the purpose of laying down pipes and aqueducts or building any reservoir, standpipe or other structure authorized to be built pursuant to this Act and also damages for any injury resulting from those acts. If any person sustaining damages as described in this section and the district cannot mutually agree upon the sum to be paid for those damages, the damages may be ascertained in the same manner and under the same conditions and restrictions and limitations as are by law prescribed in the case of damages by the laying out of highways in the Maine Revised Statutes, Title 23, chapter 3.

Sec. 5. Title of certain property of Town of Yarmouth and of Town of North Yarmouth vested in district. The title to the land, plant, property and franchises, rights and privileges, including all lands, waters, water rights, dams, reservoirs, pipes, standpipes, machinery, fixtures, hydrants, tools, apparatus and appliances, bills

receivable and accounts receivable owned by the Town of Yarmouth and used or capable of being used for the purpose of maintaining a public water supply, became vested in the Yarmouth Water District and became the property of the district on March 22, 1923, the effective date of Private and Special Law 1923, chapter 72. The district acquired all of the plant, properties, assets, franchises, rights and privileges owned by the North Yarmouth Water District, including, without limitation, all lands, buildings, waters, water rights, springs, wells, reservoirs, tanks, standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools, equipment and appliances used and useful or capable in supplying water for domestic, sanitary, commercial, industrial and municipal purposes on August 7, 1990, which is the later of the date of a referendum vote by a majority of the legal voters of North Yarmouth accepting dissolution of the North Yarmouth Water District and the acquisition of its property by the district and the date of a ratification vote by the district's board of trustees, both held in accordance with Private and Special Law 1989, chapter 111.

Sec. 6. Procedure as to crossing of public utility. If the district, in constructing, maintaining or replacing any of its facilities, must cross any property of another public utility, the district must obtain the consent of the other public utility and undertake the work in accordance with conditions established by agreement. If, within 30 days after requesting consent, the district fails to reach an agreement with the public utility, the district may petition the Public Utilities Commission to determine the time, place and manner of the crossing. All work done on the property of the public utility must be done under the supervision and to the satisfaction of the public utility or as prescribed by the Public Utilities Commission. All work must be done at the expense of the district.

Sec. 7. Board of trustees. All the affairs of the Yarmouth Water District are managed by a board of trustees composed of 5 trustees, 4 of whom are elected by the lawful voters of the district who are qualified to vote at any regular meeting of the Town of Yarmouth and one of whom is elected by the lawful voters of the district who are qualified to vote at any regular meeting of the Town of North Yarmouth. The number of trustees must be adjusted after each federal census is completed and apportioned between the Town of Yarmouth and the Town of North Yarmouth to correspond to the percent of metered services in each town, except that each town must have at least one trustee.

Sec. 8. Trustees: how elected; terms; vacancies; general powers and duties. There must be a total of 5 trustees from the Town of Yarmouth and the Town of North Yarmouth, apportioned as provided in section 7, except that those trustees who are serving on the effective date of this Act continue to serve until the expiration of their terms. The trustees shall serve for staggered terms of 3 years.

1. Nominations and elections of trustees are conducted in accordance with the laws relating to municipal elections that apply to secret ballot elections under the Maine Revised Statutes, Title 30-A, section 2528, notwithstanding a town's failure to accept the secret ballot method of voting. When the term of office of a trustee expires, the trustee's successor is elected at large by a plurality vote of the voters of the town represented by that trustee. The election must be called by the trustees of the district in the same manner as town meetings are called and, for this purpose, the trustees are vested with the powers of municipal officers of towns. A vacancy by death, resignation or removal is filled in the same manner for the unexpired term as set forth above, except that, if the remaining

unexpired term is less than 15 months, a successor trustee must be appointed by the municipal officers of the town represented by the vacating trustee.

The trustees shall appoint a registrar of voters for each town in the district, who may also be the registrar of voters for any town within the district, and fix the registrar's salary. It is the registrar's duty to make and keep a complete list of all the registered voters residing in each town in the district. The list prepared by the registrar governs the eligibility of any voter. Voters who are residing outside the territorial limits of the district are not eligible voters, and the registrar of voters shall exclude those voters from the registrar's lists. All warrants issued for elections by the trustees must show that only the voters residing within the territorial limits of either or both the Town of Yarmouth and the Town of North Yarmouth in the district are entitled to vote.

2. When a trustee ceases to be a resident of the town in the district that the trustee was elected to represent, the trustee shall vacate the office of trustee and the vacancy must be filled as provided in this section. Upon election as trustee, that trustee is immediately ineligible to serve in any elected municipal office. All trustees are eligible for reelection or reappointment, but a person holding municipal office is not eligible for election as trustee. For the purposes of this subsection, "a person holding municipal office" means a municipal officer as defined in the Maine Revised Statutes, Title 30-A, section 2001, subsection 10.

3. The trustees shall elect a chair, a treasurer and a clerk together with such other officers and agents as they consider necessary for the proper conduct of their affairs. The trustees may elect an employee of the district to serve as clerk or treasurer, but not as chair. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents, who serve at the pleasure of the trustees. The treasurer shall furnish bond in the sum and with sureties approved by the trustees. The district shall pay the cost of the bond.

4. The trustees may adopt and establish bylaws consistent with the laws of this State and necessary for the convenience and the proper management of the affairs of the district and perform other acts within the powers delegated by law to the trustees.

5. The trustees shall determine the times and places of their regular meetings, which must be held within the district, and may have special or emergency meetings at any time as called by the chair or by a majority of the trustees.

6. The trustees must be sworn to the faithful performance of their duties, including the duties of a member who serves as clerk or clerk pro tem. The trustees shall publish an annual report that includes a report of the treasurer.

7. Business of the district must be conducted in accordance with the applicable provisions of the Freedom of Access Act.

8. A quorum of the board of trustees consists of the total number of authorized trustees divided by 2 and, if necessary to obtain a whole number, the resulting number rounded up to the next whole number. All decisions of the board of trustees must be made by a majority of those trustees present and voting at that meeting.

9. The trustees receive such compensation, if any, as the district at any regular or special meeting determines, as long as notice of that purpose is included in the call for the meeting; notwithstanding the Maine Revised Statutes, Title 35-A, section 6401, subsection

2, Title 35-A, section 6410, subsection 7 does not apply to the district's determination of trustee compensation.

10. Persons who were not trustees prior to January 1, 1987 and who are not full-time employees of the district are not eligible to become members of the Maine Public Employees Retirement System as a result of their selection as trustees. For purposes of determining a trustee's eligibility to be a member of the Maine Public Employees Retirement System prior to January 1, 1987, the provisions of the appropriate governing private and special law in effect at the time of the trustee's application for membership controls.

11. The trustees may obtain an office and incur necessary expenses.

12. For a period of 18 months following the conclusion of a trustee's term on the board, the former trustee is not eligible to hold a compensated or appointed position of the district, including the position of general manager.

Sec. 9. General manager. The board of trustees shall appoint a general manager, who is responsible for the execution of the orders of the board of trustees and the administration of all district entities, services and functions. The general manager shall present to the board of trustees the full annual district budget for the board's review, oversight and endorsement prior to a public presentation. The general manager's presentation to the board of trustees must include the review of all budgetary requests including personnel compensation and final budgetary determinations and appropriations for all district operations and functions. Notwithstanding section 8, subsection 8, ratification of the budget requires a majority vote of the full board.

Sec. 10. Contracts of town to be assumed by district; district is quasi-municipal corporation. All valid contracts and obligations of the Town of Yarmouth issued for the purpose of supplying the inhabitants of the town with water must be assumed and carried out by the district, and all contracts between the North Yarmouth Water District and any person, firm or corporation relating to supplying water that were in effect on the date of the transfer by the North Yarmouth Water District to the district under Private and Special Law 1989, chapter 111 are assumed and carried out by the district. The district is hereby declared to be a quasi-municipal corporation within the meaning of the Maine Revised Statutes, Title 30-A, section 2351, and the property of the district is exempt from taxation. All incidental powers, rights and privileges necessary for the accomplishment of this section are granted to the district.

Sec. 11. Authority to borrow money. For accomplishing the purposes of this Act, the district, through its trustees, without district vote, is authorized to borrow money from time to time, temporarily or for long terms, and to issue for that borrowing the interest-bearing negotiable bonds and notes of the district, maturing serially or otherwise, and to make subsequent renewals of the same in whole or in part to pay necessary expenses and liabilities incurred in accordance with those purposes, including, but not limited to, refunding any bond, note or other debt of the district and for the purpose of establishing a fund or funds for those purposes. For the purpose of obtaining or providing money to pay any necessary expenses and liabilities incurred in the creation of the district, or for a required municipally subsidized expansion, in securing sources of supply and taking water and land, in paying damages, laying pipes, mains, aqueducts and conduits and in constructing, maintaining and operating a water plant or system and making renewals,

extensions, additions and improvements to the same, the district through its trustees may from time to time issue negotiable notes and bonds of the district. Notes and bonds under this section must be in an amount necessary in the judgment of the trustees, maturing at one time or in uniform or varying installments, with or without provisions for calling the same for payment before maturity, and in case of such call provisions with or without providing for the payment of a premium not exceeding 5% of the principal upon such call. The notes and bonds are legal obligations of the district, and the notes and bonds are legal investments for savings banks.

Sec. 12. Payment of rates; purposes for which revenue used; sinking fund.

All individuals, firms and corporations, whether public, private or municipal, shall pay to the treasurer of the district the rates established by the board of trustees for the water service used with respect to their real estate, and the rates must be established in accordance with the Maine Revised Statutes, Title 35-A, chapter 61 and must be uniform within the district. The rates must be established to be sufficient to provide revenue to the district to carry out the purposes of its incorporation without the need for any financial assistance from either the Town of Yarmouth or the Town of North Yarmouth other than the normal payment of water charges for services rendered, including, but not limited to, the following purposes:

1. To pay the current running expenses for operating and maintaining the water system and provide for such extensions and renewals as may become necessary, except when such extensions have been provided for by an issue of bonds. The trustees may use the revenue from rates to make extensions unless it has done so by an issue of bonds;

2. To provide for payment of interest on the indebtedness of the district; and

3. To provide each year a sum equal to not less than 1% and not more than 4% of the entire indebtedness of the district, which sum must be turned into a sinking fund to provide for the final extinguishment of the funded debt. The money set aside for the sinking fund must be devoted to the retirement of the obligations of the district or invested in such securities as provided for in this Act or otherwise authorized under state law, except 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 matures and is retired each year.

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

The district may lien real estate, foreclose and collect unpaid rates in accordance with Title 35-A, chapter 61.

Sec. 2. Existing rights not affected; rights conferred subject to Maine Revised Statutes. Nothing in this Act is intended to affect any rights under existing law; however, upon approval by the voters of the district at a referendum as provided in section 3 of this Act, section 1 of this Act repeals and replaces Private and Special Law 1923, chapter 72, as amended. All the rights and duties under this Act must be exercised and performed in accordance with all the applicable provisions of the Maine Revised Statutes.

Sec. 3. Referendum; effective date. This Act takes effect when approved only for the purpose of permitting its submission to the legal voters within the Town of Yarmouth and the Town of North Yarmouth at elections called for that purpose and held within 2 years of the effective date of this Act. The elections must be called, advertised and conducted according to the law relating to municipal elections, including, notwithstanding

a municipality's failure to adopt secret ballot voting, the Maine Revised Statutes, Title 30-A, section 2528, and excepting that the registrars of the Town of Yarmouth and the Town of North Yarmouth are not required to prepare or the clerks to post a new list of voters. For the purpose of registration of voters, the registrars of voters must be in session the secular day preceding the election. The subject matter of this Act is reduced to the following question:

"Do you favor repealing and replacing the Charter of the Yarmouth 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 Yarmouth and the Town of North Yarmouth and due certificate of the results filed by the clerks with the Secretary of State.

This Act takes effect for all other purposes immediately upon its approval by a majority of the legal voters voting at each election. 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 of the effective date of this Act.