

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 1288**

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H. P. 1929

House of Representatives, March 8, 1949

Referred to the Committee on Public Utilities, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. House of Lincoln.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-NINE

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**AN ACT to Incorporate the Lincoln Water District.**

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

**Sec. 1. Territorial limits; corporate name; purposes.** That part of the town of Lincoln in the county of Penobscot and the people and territory within the same known as Township 2 and Township 3 shall be, and hereby are, constituted a public municipal corporation under the name of the "Lincoln Water District" for the purpose of supplying the inhabitants of said town or any part of said town with pure water for domestic, sanitary and municipal purposes.

Provided, however, that it shall not construct any system of pipe lines or development, without first having submitted its plans to the public utilities commission, and obtained its advice therefor in writing, under power vested in said commission by section 13 of chapter 40 of the revised statutes of 1944.

**Sec. 2. Powers of said Lincoln Water District.** The said district, for the purposes of its corporation, is hereby authorized to take, hold, divert, use and distribute water from any lake, pond, river, surface or underground brook, spring or vein of water in said town of Lincoln, and to 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.

**Sec. 3. May exercise 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 land 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 and sewerage system, 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 and sewage, for forming basins, reservoirs and outlets in a sewage system, for erection of buildings for pumping works for use therein, for laying pipes and sewers and maintaining same, and for laying and maintaining conduits for carrying, collecting, discharging and disposing of sewage matters and waters, for filtering, rectifying, treating and disposal 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 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.

Provided, however, 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, or as provided in section 7 hereof.

**Sec. 4. Authority as to sewers.** Said district may take into, receive and convey through its pipes, conduits and system, surface water and the natural flowage of existing water courses; may establish through and by its trustees regulations for the use of sewers and fix and collect the prices to be paid for entering the same, and also the annual rentals for the use thereof; may carry and lay conduits and pipes under any water course, and cross any drain or sewer, or, if necessary, to change its direction in such a manner as not to obstruct the use thereof, and in general to do any other acts or things necessary, convenient and proper to be done for the purpose of its incorporation.

**Sec. 5. Abutting owner may enter sewer.** Said district at all times, after it shall commence receiving pay for the sewerage facilities supplied by it, shall be bound to permit the owners of all premises abutting upon its lines of pipes and conduits to enter the same with all proper sewerage, upon conformity to its rules and regulations and payment of the prices and rentals established therefor.

**Sec. 6. Liability for damages.** If any person, sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party upon petition to the county commissioners of Penobscot county may have said damages assessed by them, the procedure and all subsequent proceedings and rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

**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 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 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 3 trustees, resident therein, who shall be appointed by the municipal officers of the town of Lincoln. 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 Lincoln shall appoint a successor to serve the full term 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 a resident of said district, his office as trustee shall be declared vacant. During his term of office, no selectman of said town of Lincoln shall serve as a member of the board of trustees of the district.

**Sec. 9. Trustees; how elected; meetings; officers; vacancies filled for the unexpired term.** The 1st board of trustees shall be appointed by the municipal officers of the town of Lincoln within 10 days after the acceptance of this act by the voters of said district, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd, and 1 until the 3rd such meeting. Thereafter, 1 member shall be appointed by the municipal officers of the town of Lincoln 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 meet by agreement and waiver without such notice. 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, fix the treasurer's salary, which shall in no case exceed \$200 per year, and fill vacancies in that office. The treasurer shall furnish a bond, issued in such sum by a surety company as the trustees may approve, 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 Lincoln.

The compensation of the trustees shall not exceed \$50 each per year, unless otherwise provided by vote, as above defined.

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. 10. 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 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. Thirty-five 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 meeting in lieu thereof may be called in like manner to be held within 2 months from said date.

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. 11. 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 the provisions of section 9, 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 purpos 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. 12. District and town authorized to make contracts.** Said district through its trustees is authorized to contract with persons and corporations, including the town of Lincoln, and said town of Lincoln is authorized to contract with it, for the supply of water and sewerage facilities for municipal purposes.

**Sec. 13. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investment for savings banks.** For accomplishing the purposes of this act, said district, through its trustees, without the necessity of a vote of the inhabitants of said district, is authorized to borrow money from time to time, not exceeding \$375,000 and to issue therefor the interest-bearing, negotiable notes of the district, maturing serially or otherwise, and to make subsequent renewals of the same in whole or in part, and for said purposes and for the purpose of refunding any notes, bonds or other lawful indebtedness to establish a fund therefor. For obtaining or providing money to pay

or to meet any necessary expenses and liabilities under the provisions of this act, including expenses in the creation of this district, in securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and sewage disposal system and making extensions, additions and improvements to the same, the said district, through its trustees, without the necessity of a vote of the inhabitants of said district, 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, and with or without call provisions. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of sections 132 and 133 of chapter 49 of the revised statutes of 1944. The said notes and bonds shall be legal investments for savings banks.

**Sec. 14. Property tax exempt.** The property of said district shall be exempt from all taxation by the town of Lincoln.

**Sec. 15. 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 service used by them, and said rates shall be uniform within the territory supplied by the district, and the water rates shall be subject to the approval of the public utilities commission. Said water and sewer 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 sewer system.

**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 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. 16. Authorized to acquire property and franchises of Lincoln Water Company; also sewer facilities from town of Lincoln.** Said district is hereby authorized and empowered to acquire by purchase or by the exercise of the right 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 Lincoln Water Company, situate in the town of Lincoln, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water and in the collection, discharge and disposition of sewage in the town of Lincoln.

The district is further authorized to purchase, and the town of Lincoln to sell to such district, the existing sewer line and facilities situate in Lincoln and now owned by such town, including such equipment for use in connection therewith as the district and town may agree upon. In event of the failure of the parties to agree upon a purchase price therefor, such price shall be fixed by arbitration and appraisers shall be appointed upon petition filed by the district in the clerk's office of the superior court for the county of Penobscot in term time or vacation and addressed to any justice of such court; said justice, after due notice to the town of Lincoln and to the district, and after hearing, shall appoint 3 disinterested appraisers for the purpose of fixing a fair purchase price for said sewer line and facilities. The fair purchase price fixed by such appraisers or by a majority of them and certified to the district and to the town of Lincoln shall be final and binding upon both parties. But in fixing such fair price, no account shall be taken by the appraisers of the cost or value of labor or other benefits furnished or contributed by governmental or other agencies without expense to the town.

**Sec. 17. Procedure in case trustees and water company fail to agree on terms of purchase.** In case said trustees fail to agree with said Lincoln Water Company upon the terms of purchase of the above mentioned property on or before January 1, 1950, said district, through its trustees aforesaid, is hereby authorized to take said plant, property and franchises as for public use, by petition therefor in the manner hereinafter provided. Said district, through its trustees, is hereby authorized on or before May 1, 1950, to file a petition in the clerk's office of the superior court for the county of Penobscot, in term time or in vacation addressed to any justice

of such court, who, after due notice to said Lincoln Water Company and its mortgagees, shall, after hearing and within 30 days after the date on which said petition is returnable, appoint 3 disinterested appraisers for the purpose of fixing a valuation of said plant, property and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of the superior court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner, may fix a time at which the said water company shall file in the clerk's office of the superior court for the county of Penobscot for the inspection of the petitioner, so far as they relate to the service in the town of Lincoln, the following :

1st, schedule showing the names, residents and water service of all its customers, and the same information regarding the sewer service of the Lincoln Water Company on the 1st day of January, 1950, with the rates charged therefor ;

2nd, copies of all contracts in force on said 1st day of January, 1950 ;

3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of January, 1950 ; and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto ;

4th, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said 1st day of January, 1950, with such brief description thereof as will reasonably identify the same ;

5th, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, shut-off boxes, conduits, fixtures and machinery and all the physical elements in such water system, giving in detail quantities, sizes, lengths, and specifying the streets, roads, or ways where situated ;

6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said 1st day of January, 1950.

Such orders may be enforced from time to time by any justice of said superior court, in term time or in vacation, upon motion of either party,

as such justice may deem reasonable and proper in the premises. At such hearing, the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the water mains and pipes of said water company, externally and internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by the said district.

The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive just compensation for all and the same. The 1st day of January, 1950, 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 said district. The reports of said appraisers, or a majority of them, shall be filed 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 said request 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 exceptions 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 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 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 and after notice and hearing, take account of all receipts and expenditures properly had or incurred by the Lincoln Water Company in respect of the territory comprising said district belonging to this period, from and after said 1st day of January, 1950, 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 law and fact by such justice at such hearing shall be final.

On payment or tender by said district of the amount so determined and the performance of all other terms and conditions so imposed by said court, the entire plant, property and franchises of Lincoln Water Company used and usable in supplying water in the town of Lincoln 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, but 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. 18. Valid contracts of water company to be assumed by the district.** All valid contracts now existing between the Lincoln Water Company and any person or corporation for supplying water in the town of Lincoln shall be assumed and carried out by said Lincoln Water District.

**Sec. 19. 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 40 of the revised statutes of 1944 and all acts amendatory thereof or additional thereto.

**Sec. 20. Act void unless property of water company is acquired.** If said water district shall fail to acquire by purchase or by the exercise of the right of eminent domain, as in this act provided, within 6 years from the effective date of this act, the plant property, franchises, rights and privileges owned by the Lincoln Water Company and used or usable in supplying water in the town of Lincoln, then this act shall become null and void.

**Sec. 21. Referendum; effective date; certificate to secretary of state.** This act shall take effect 90 days after the adjournment of the legislature, only for the purpose of permitting its submission to the legal voters of the town of Lincoln at a special meeting to be called and held for the purpose by the municipal officers of said town at the regular voting places, the date of holding said meeting to be determined by said municipal officers, but to be not later than November 1, 1949. Such special meeting shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of registration in said town shall not be required to prepare for posting nor the town clerk to post a new list of voters, and for the purpose of registration of voters said board shall be in session the 3 secular days next preceding such meeting, the first 2 days 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 sessions. 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 to Incorporate the Lincoln Water District 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 shall be declared by the municipal officers and due certificate thereof filed by the town clerk with the secretary of state.

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, however, that the total number of votes cast for and against the acceptance of this act at said meeting equaled or exceeded 25% of the total vote for all candidates for governor cast in said town at the next previous gubernatorial election.