

MAINE STATE LEGISLATURE

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NEW DRAFT.

SEVENTY-THIRD LEGISLATURE

HOUSE.

No. 617

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND SEVEN.

AN ACT to incorporate the Portland Water District.

*Be it enacted by the Senate and House of Representatives in
Legislature assembled, as follows:*

Section 1. Subject to the provisions of section seventeen
2 hereof, the territory and people constituting the city of Port-
3 land, the city of Westbrook and the city of South Portland
4 shall constitute a public municipal corporation under the
5 name of the Portland Water District for the purpose of
6 supplying the inhabitants of said cities and the towns of
7 Standish, Windham, Cape Elizabeth and Scarborough and said
8 municipalities with pure water for domestic, sanitary and
9 municipal purposes.

Sect. 2. The said district, for the purposes of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Sebago lake.

Sect. 3. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase or otherwise, any land or interest therein or water rights necessary for erecting and maintaining dams, for flowage, for power for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and water shed, 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.

Sect. 4. The said district is hereby authorized to lay and through the streets, roads, ways and highways of the cities and towns named in section one and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts, and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts 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 replaced in proper condition.

Sect. 5. The said district is hereby authorized, for the purposes of its incorporation, to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes.

Sect. 6. In exercising any right of eminent domain conferred upon it by law, from time to time, or any rights of eminent domain through or under the franchises of any water company by it acquired, the said district shall file in the office of the county commissioners of Cumberland county and record in the registry of deeds in said county plans of the location of all lands or interests therein or water rights, to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire the property authorized to be taken, and which is described in such location, or the location recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof, and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of ten days from such filing, whereon possession may be had of all said lands or interests therein or water rights so taken, but title thereto shall not vest in said district until payment therefor.

Sect. 7. 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 Cumberland county, may have said damages assessed by them; the procedure and all subsequent

68 proceedings and right of appeal thereon shall be had under
69 the same restrictions, conditions and limitations as are or
70 may be by law prescribed in the case of damages by the lay-
71 ing out of highways.

Sect. 8. In case of any crossing of a railroad, unless con-
73 sent is given by the company owning or operating such
74 railroad as to place, manner and conditions of the crossing,
75 within thirty days after such consent is requested by said
76 district, the railroad commissioners shall determine the
77 place, manner and conditions of such crossing; and all work
78 within the limits of such railroad location shall be done
79 under the supervision and to the satisfaction of such rail-
80 road company, but at the expense of the district.

Sect. 9. All the affairs of said district shall be managed
82 by a board of trustees composed of five members. Three of
83 said trustees shall be elected by the city of Portland in the
84 manner hereinafter provided. If this act is accepted by the
85 city of Westbrook, one member of said board shall be elected
86 by the said city of Westbrook in the manner hereinafter pro-
87 vided, otherwise such member shall be elected by the city
88 of Portland in the manner hereinafter provided. If this act
89 is accepted by the city of South Portland, one member of
90 said board shall be elected by the city of South Portland in
91 the manner hereinafter provided, otherwise such member
92 shall be elected by the city of Portland in the manner here-
93 inafter provided.

Sect. 10. The trustees so to be elected shall be elected by
95 a plurality vote of the legal voters in each of said cities
96 accepting this act voting at an election to be specially called

97 and held therefor on the fourth Monday of May, nineteen
98 hundred and seven. Such special election shall be called,
99 advertised and conducted according to the law relating to
100 municipal elections in said cities, except as otherwise pro-
101 vided herein, provided, however, that the board of regis-
102 tration in said cities shall not be required to prepare for
103 posting or the city clerks thereof to post a new list of voters,
104 but for the purpose of registration of voters said boards
105 shall be in session the three secular days next preceding
106 such election, the first two days thereof to be devoted to
107 registration of voters and the last day to enable the board
108 to verify the corrections of said lists and to complete and
109 close up its records of said sessions. All nominations of
110 candidates so to be voted for shall be made by nomination
111 papers signed in the aggregate for each candidate by no-
112 less than fifty qualified voters of the city in which he is
113 named as a candidate. Each voter signing a nomination
114 paper shall make his signature in person, and add to it his
115 place of residence, and each voter may subscribe to as many
116 nominations as there are trustees to be elected in his city
117 and no more. Such nomination papers shall, before being
118 filed, submitted to the city clerk of the city where such
119 nomination is made, who shall forthwith certify thereon
120 what number of the signatures are names of qualified voters
121 in said city; one of the signers to each such separate paper
122 shall swear to the truth thereof, and the certificate of such
123 oath shall be annexed to or made upon the nomination
124 papers. Such nomination papers shall be filed with the
125 city clerk of the city where such nomination is made at least
126 seven days, exclusive of Sundays, previous to the day of

127 such election. With such nomination papers shall also be
128 filed the consent in writing of the person or persons nomi-
129 nated. All nomination papers, being filed and being in
130 apparent conformity with the foregoing provisions, shall
131 be deemed to be valid; and if not in apparent conformity,
132 they may be seasonably amended under oath. In case any
133 candidate who has been duly nominated under the provis-
134 ions hereof shall die before the day of election, or shall
135 withdraw in writing, the vacancy may be supplied in the
136 manner herein provided for such nominations. The name
137 so supplied for the vacancy shall, if the ballots have not been
138 printed, be placed on the ballots instead of the original
139 nomination; or, if the ballots have been printed, new bal-
140 lots containing the new nomination shall, if practicable, be
141 furnished, or slips containing the new nomination shall be
142 printed under the direction of the city clerk, which may be
143 pasted in proper place upon the ballots and thereafter shall
144 become part and parcel of said ballots as if originally
145 printed thereon. The ballot in each city shall contain the
146 names of all candidates so nominated in such city printed in
147 one column under the heading, "For Trustees of the Port-
148 land Water District." Above such heading shall be printed
149 "Vote for three (or such number as may be appropriate)
150 trustees. Make a cross to the right of each name voted
151 for." As many blank spaces shall be left after the names of
152 the candidates as there are trustees to be elected, in which
153 the voter may paste on or by writing insert the name or
154 names of any person or persons for whom he desires to vote.
155 In preparing his ballot the voter shall mark a cross (X)

156 against and to the right of such names on said ballots as he
157 desires to vote for, not to exceed the number of trustees so
158 to be elected in the city in which he is voting. If the voter
159 shall desire to vote for any person or persons whose name
160 or names are not printed on the ballot, he may fill in such
161 name or names in the blank spaces left therefor by writing
162 the same therein or by using a sticker or stickers containing
163 such new name or names. Where the voter so adds by
164 writing or by sticker such new name or names, his vote for
165 such new name or names shall be counted therefor although
166 he may fail to mark a cross against the same. The result of
167 such election in each city shall be declared by the municipal
168 officers and due certificate thereof filed with the city clerk
169 thereof. The term of office of the trustees shall begin on
170 the said fourth Monday of May. As soon as convenient
171 after all the members of said board have been so chosen,
172 said trustees shall hold a meeting at the city rooms in the
173 city of Portland to be called by one of said trustees upon
174 such reasonable notice therefor as he deems proper. They
175 shall organize by the election of a president and a clerk,
176 adopt a corporate seal and when necessary may choose a
177 treasurer and all other needful officers and agents for the
178 proper conduct and management of the affairs of said dis-
179 trict. They may also ordain and establish such by-laws as
180 are necessary for their own convenience and the proper
181 management of the affairs of the district. At said first
182 meeting the trustees so elected shall determine by lot the
183 term of office of each trustee so that one trustee shall retire
184 each year and whenever the term of office of a trustee
185 expires his successor shall be elected by a plurality vote by

186 the city which elected him and upon nomination made as
187 herein provided for the first election of trustees, and for the
188 purpose of such election, a special election shall be called
189 and held on the fourth Monday of May in each year in the
190 city wherein such trustee is to be elected, the same to be
191 called in the manner hereinbefore provided for the first
192 election of trustees. The trustee so elected shall serve the
193 full term of five years; and in case any vacancy arises in
194 the membership of the board of trustees it shall be filled in
195 like manner, for the unexpired term, by special election to
196 be called by the municipal officers of the city wherein the
197 election is to be held. When any trustee ceases to be a resi-
198 dent of the city by which he was elected he vacates such
199 office of trustee and the vacancy shall be filled as aforesaid.
200 All such trustees shall be eligible to re-election, but no per-
201 son holding a municipal office in either of said cities shall
202 be eligible to election as trustee. Said trustees may procure
203 an office and incur such expenses as may be necessary.
204 Each member shall receive in full compensation for his
205 services an allowance of four hundred dollars per annum.
206 At the close of each fiscal year the trustees shall make a
207 detailed report of their doings, of the receipts and expen-
208 ditures of said water district, of its financial and physical
209 condition, and of such other matters and things pertaining
210 to said district as shall show the inhabitants of said district
211 how said trustees are fulfilling the duties and obligations
212 of their trust, such reports to be made and filed with the
213 municipal officers of the cities accepting this act.

Sect. II. Said water district is hereby authorized and
215 empowered to acquire by purchase or by the exercise of the

216 right of eminent domain, which right is hereby expressly
217 delegated to said district for said purpose, the entire plants,
218 properties, franchises, rights and privileges of the Portland
219 Water Company and the Standish Water and Construction
220 Company, except their cash assets, including all stocks in
221 other companies, lands, waters, water rights, dams, struc-
222 tures, reservoirs, pipes, machinery, fixtures, hydrants, tolls
223 and all apparatus and appliances owned by said companies,
224 whether their aggregate value exceeds or not the value-
225 limit named in the charter of said companies and whether
226 the record title thereto is or is not in said Portland Water
227 Company. The said water companies are hereby author-
228 ized to sell and transfer their respective franchises and
229 properties to said water district. All said franchises and
230 properties shall be taken subject to all mortgages, liens and
231 encumbrances thereon, all of which mortgages, liens and
232 encumbrances shall be assumed and paid by said Portland
233 Water District.

Sect. 12. Where the said trustees fail to agree with either
235 of said water companies upon terms of purchase on or
236 before July first, nineteen hundred and seven, then said
237 water district through its trustees is hereby authorized to
238 take all the plants, properties and franchises of such water
239 companies so failing to agree, subject, however, to all mort-
240 gages, liens and encumbrances thereon as stated in section
241 eleven, as for public uses, by a petition therefor in the
242 manner hereinafter provided, wherein such water companies
243 and their mortgagees shall be the parties defendant. And
244 said water district, through its trustees, is hereby authorized

245 on or before July fifteenth, nineteen hundred and seven, to
246 file a petition in the clerk's office of the supreme judicial
247 court for the county of Cumberland in term time or vaca-
248 tion, addressed to any justice thereof, who, after notice to
249 said defendant water companies and their mortgagees, shall,
250 after hearing and within sixty days after the filing of said
251 petition, appoint three disinterested appraisers, none of
252 whom shall be residents of the county of Cumberland, one
253 of whom shall be learned in the law, for the purpose of fix-
254 ing the valuations respectively of the plant, property and
255 franchises of each of said defendant water companies
256 described in section eleven of this act. The time for se-
257 appointing said appraisers may be extended by the court an
258 additional thirty days. Said petition shall not be dismissed
259 after filing, but may and shall be amended in any manner
260 required to enable the court to make all necessary decrees
261 thereon. At the hearing aforesaid, such justice, upon
262 motion of the petitioner, if the same are not voluntarily
263 produced, may order under proper terms the production
264 for inspection by the petitioner, of all books and papers
265 pertinent to the issues to be heard by said appraisers. The
266 said appraisers shall have the power of compelling attend-
267 ance of witnesses and the production of books and papers
268 pertinent to the issue and may administer oaths; and any
269 witnesses or person in charge of such books or papers refus-
270 ing to attend or to produce the same shall be subject to the
271 same penalties and proceedings, so far as applicable, as wit-
272 nesses summoned to attend the supreme judicial court.
273 Depositions may be taken as in civil actions. The report of

274 a stenographer, appointed by the appraisers, certified by
275 said appraisers as correct, shall be filed with the award to
276 be made by said appraisers and shall be legal evidence of
277 all proceedings so reported. The appraisers so appointed,
278 shall, after due notice and hearing, fix the respective valu-
279 ations of the plants, properties and franchises of said
280 defendant water companies as described in section eleven
281 of this act at what they are fairly and equitably worth, so
282 that said water companies shall severally receive just com-
283 pensation for all the same. The first day of January, nine-
284 teen hundred and eight, shall be the date as of which the
285 valuations aforesaid shall be fixed, from which date interest
286 on said award at the rate of six per cent per annum shall
287 run and all net rents and profits accruing thereafter shall
288 belong to said water district. The report of said appraisers
289 or of a majority of them, shall be filed in said clerk's office
290 within six months after their appointment, unless the time
291 is extended by the court for cause. After said report is
292 filed, such single justice, so appointing said appraisers, or
293 in case of his inability to act, then any justice designated
294 for the purpose, by the chief justice, may, after notice and
295 hearing, confirm or reject the same or recommit, if justice
296 so requires, and in case of such rejection or recommital such
297 justice may order new hearing and new report thereon.
298 The award of the appraisers shall be conclusive as to valu-
299 ations. Upon the confirmation of their report, the court
300 so sitting, in term time or vacation, shall thereupon, after
301 hearing, make final decree upon the whole matter, including
302 transfer of the properties and franchises, jurisdiction over

303 which is hereby conferred with the same power to enforce
304 said decree as in equity cases. All the costs and expenses
305 arising under such petition and appraisal shall be paid and
306 borne as directed by the court in said final decree. The find-
307 ings of such justice as to such costs and expenses and their
308 apportionment shall be final. In all other matters the jus-
309 tice so making such final decree, shall, upon request of any
310 of the parties, make separate findings of law and fact. All
311 such findings of fact shall be final, but any party aggrieved
312 may take exceptions to any rulings of law so made, the same
313 to be accompanied only by such parts of the case as are
314 necessary to a clear understanding of the questions raised
315 thereby. Such exceptions shall be claimed on the docket
316 within ten days after such final decree is signed, entered
317 and filed, and notice thereof has been given by the clerk to
318 the parties or their counsel, and said exceptions so claimed
319 shall be made up, allowed and filed within said time unless
320 further time is granted by the court or by agreement of
321 the parties. They shall be entered at the next term of the
322 law court to be held after the filing of such exceptions and
323 there heard unless otherwise agreed, or the law court shall
324 for good cause order a further time for hearing thereon.
325 Upon such hearing the law court may confirm, reverse or
326 modify the decree of the court below, or remand the cause
327 for further proceedings as it seems proper. During the
328 pendency of such exceptions the cause shall remain on the
329 docket of the court below marked "Law," and decree shall
330 be entered thereon by a single justice, in term time or in
331 vacation, in accordance with the certificate and opinion of

332 the law court. Before the aforesaid plants, properties and
333 franchises, or any of them, are transferred in accordance
334 with such final decree, and before the payment therefor,
335 the court sitting in said county of Cumberland, by a single
336 justice thereof, as hereinbefore provided, shall, upon motion
337 of any party, after notice and hearing, take account of all
338 receipts and expenditures properly had and incurred by
339 each of said water companies belonging to the period from
340 and after January first, nineteen hundred and eight, and
341 all net rents and profits accruing thereafter, and shall order
342 the net balance due to any party to be added to or deducted
343 from the amount to be paid under said final decree as the
344 case may be. All findings of law or fact by such single
345 justice at such hearings shall be final. On payment or
346 tender by said Water District of the amounts so fixed and
347 the performance of all other terms and conditions so im-
348 posed by the court, the entire plants, properties and fran-
349 chises respectively of said water companies as described
350 in section eleven, shall become vested in said Water Dis-
351 trict, subject to all liens, mortgages and encumbrances
352 theretofore created by said water companies, or either of
353 them. After the filing of said petition it shall not be dis-
354 continued or withdrawn by said Water District, and the
355 said water companies, or either of them, may thereafter-
356 wards cause said valuations to be made as herein provided,
357 and shall be entitled to appropriate process to compel said
358 Water District to perform the terms of the final decree
359 and to pay for said plants, properties and franchises in
360 accordance therewith. If a vacancy occurs at any time

361 in said board of appraisers, from any cause, any justice
362 of the supreme judicial court, sitting in said county of
363 Cumberland, may, in term time or in vacation, after notice
364 and hearing, appoint a new appraiser or appraisers, and
365 make all such orders for hearing said cause by the apprais-
366 ers anew or for any extension of time for making their
367 award, or otherwise, as the circumstances of the case may
368 require.

Sect. 13. All valid contracts now existing between said
2 water companies, or either of them, and any person, cor-
3 poration or municipal corporation for supplying water within
4 the cities of Portland, South Portland and Westbrook and
5 the towns of Standish, Gorham, Windham, Falmouth, Cum-
6 berland and Cape Elizabeth shall be assumed and carried
7 out by said Portland Water District. The property of the
8 Portland Water Company within the town of Gorham may,
9 after its acquisition by said district, be taxed such amount
10 as shall not exceed the tax assessed thereon for the muni-
11 cipal year nineteen hundred and six.

Sect. 14. For accomplishing the purposes of this act, said
2 Water District, through its trustees, is authorized to borrow
3 money temporarily and to issue therefor the interest-bearing
4 negotiable notes of the district, and for the purpose of
5 refunding the indebtedness so created, of paying any neces-
6 sary expenses and liabilities, incurred under the provisions
7 of this act, including the expenses incurred in the creation
8 of the district, in acquiring the properties and franchises
9 of the Portland Water Company and the Standish Water
10 and Construction Company, by purchase or otherwise, of

11 the purchase or acquisition of the properties and franchises
12 of said water companies, of assuming and paying the mort-
13 gages, liens and encumbrances thereon as provided in sec-
14 tion eleven, of securing sources of supply, taking water, ~~and~~
15 land, paying damages, laying pipes, constructing, maintain-
16 ing and operating a water plant, and making renewals, ex-
17 tensions, additions and improvements to the same, the said
18 Water District, through its trustees, may from time to time
19 issue bonds of the district, to an amount or amounts neces-
20 sary in the judgment of the trustees therefor. Said notes
21 and bonds shall be legal obligations of said Water District,
22 which is hereby declared to be a quasi municipal corporation
23 within the meaning of Section 96, Chapter 47 of the Revised
24 Statutes, and all the provisions of said section shall be appli-
25 cable thereto. The said notes and bonds shall be legal
26 investments for savings banks.

Sect. 15. All individuals, firms and corporations, whether
2 private, public or municipal, shall pay to the treasurer of
3 said district the rate established by said board of trustees
4 for the water used by them, and said rates shall be uniform
5 within the territory supplied by the district. Said rates shall
6 be so established as to provide revenue for the following
7 purposes:

I. To pay the current expenses for operating and main-
9 taining the water system.

II. To provide for the payment of the interest on the
11 indebtedness created or assumed by the district.

III. To provide each year a sum equal to not less than
13 one nor more than five per cent of the entire indebtedness

14 created or assumed by the district, which sum shall be
15 turned into a sinking fund and there kept to provide for the
16 extinguishment of such indebtedness. The money set aside
17 for the sinking fund shall be devoted to the retirement of
18 the obligations of the district or invested in such securities
19 as savings banks are allowed to hold.

IV. If any surplus remains at the end of the year, it may
21 be divided between the municipalities accepting this act and
22 so composing the district in the same proportions as each
23 contributed to the gross earnings of the district's water sys-
24 tem, and, in order that these proportions may be readily
25 determined, all moneys received for water in each of said
26 municipalities shall be entered in separate accounts so that
27 the total amount thereof can be easily ascertained.

Sect. 16. All incidental powers, rights and privileges nec-
2 essary to the accomplishment of the main object herein set
3 forth are granted to the public municipal corporation hereby
4 created.

Sect. 17. This act, so far as it includes the territory and
2 people constituting the city of Westbrook and the city of
3 South Portland as a part of said Portland Water District,
4 as provided in section one hereof, shall not take effect
5 respectively as to said Westbrook and said South Portland,
6 unless accepted and approved by a majority vote of the legal
7 voters respectively of said cities voting at elections to be
8 specially called and held for the purpose on the second
9 Monday of May, nineteen hundred and seven. Such special
10 elections shall be called, advertised and conducted according
11 to the law relating to municipal elections, provided, how-

12 ever, that the board of registration in each of said cities
13 shall not be required to prepare for posting or the city clerk
14 to post a new list of voters, and for the purpose of regis-
15 tration of voters said board shall be in session the three
16 secular days next preceding such elections, the first two
17 days thereof to be devoted to registration of voters and the
18 last day to enable the boards to verify the corrections of
19 said lists and to complete and close up their records of said
20 sessions. The city clerk shall reduce the subject matter of
21 this act to the following question: "Shall the act to incor-
22 porate the Portland Water District be accepted?" and the
23 voters shall indicate by a cross placed over the words "Yes"
24 or "No" their opinion of the same. The result in each city
25 shall be declared by the municipal officers thereof and due
26 certificate thereof filed by the city clerk with the secretary
27 of state. Should either or both said cities fail to accept this
28 act, then the territory and people within such city or cities
29 shall not be a part of said Portland Water District, but said
30 Water District shall supply water to such city or cities, and
31 to the inhabitants thereof under the provisions of this act.

Sect. 18. This act, subject to the provisions of section
2 seventeen, shall take effect when approved by a majority
3 vote of the legal voters of the city of Portland voting at an
4 election to be specially called and held for the purpose on
5 the second Monday of May, nineteen hundred and seven.
6 Such special election shall be called, advertised and con-
7 ducted according to the law relating to municipal elections,
8 provided, however, that the board of registration shall not
9 be required to prepare for posting or the city clerk to post

10 a new list of voters and for the purpose of registration of
11 voters said board shall be in session the three secular days
12 next preceding such election, the first two days thereof to
13 be devoted to registration of voters and the last day to
14 enable the board to verify the corrections of said lists and
15 to complete and close up its records of said sessions. The
16 city clerk shall reduce the subject matter of this act to the
17 following questions: "Shall the act to incorporate the Port-
18 land Water District be accepted?" and the voters shall indi-
19 cate by a cross placed over the words "Yes" or "No" their
20 opinion of the same. The result shall be declared by the
21 mayor and aldermen and due certificate thereof filed by the
22 city clerk with the secretary of state.

Sect. 19. Wherever the word Portland is used in this act
2 it shall be construed to exclude the islands in Casco Bay.
3 In all elections hereunder the board of registration shall
4 exclude from their lists and from all check lists the legal
5 voters that are residents of said islands, and all warrants
6 issued to the wards of which such islands are a part shall
7 be varied accordingly to show that only the voters resident
8 within the territorial limits of the Water District are entitled
9 to vote hereunder.

Sect. 20. Sections two, three, four, five, six, seven and
2 eight shall be inoperative, null and void, unless the said
3 Water District shall first acquire by purchase, or by the
4 exercise of the right of eminent domain as in this act pro-
5 vided, the plants, properties and franchises, rights and privi-
6 leges of the Portland Water Company and the Standish
7 Water and Construction Company.

Sect. 21. This act shall take effect when approved by the
2 Governor, so far as necessary to empower the calling and
3 holding of the elections authorized in sections seventeen and
4 eighteen hereof.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,

Augusta, March 16, 1907.

Reported by Mr. DAVIES from Committee on Judiciary, and
ordered printed under joint rules.

E. M. THOMPSON, *Clerk.*