

MAINE STATE LEGISLATURE

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NEW DRAFT.

SEVENTY-SIXTH LEGISLATURE

SENATE

NO. 542

In Senate, March 17, 1913.

*Reported by Senator Dutton from Committee on Judiciary,
and ordered printed under joint rules.*

W. E. LAWRY, Secretary.

STATE OF MAINE

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

AN ACT to supply the town of Winthrop with pure water.

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

Section 1. The town of Winthrop by a commission as
2 hereinafter provided, acting for and in behalf of said town
3 is authorized to take, hold, divert, use and distribute water
4 from Narrows Pond, so called, in said Winthrop, and from
5 Lake Maranacook in the towns of Winthrop and Readfield,
6 either or both, and from any surface or underground brooks,
7 springs, wells or streams in said Winthrop, for the purpose
8 of supplying the inhabitants of said Winthrop with pure
9 water for domestic, sanitary, commercial, fire prevention
10 and municipal purposes.

Sect. 2. Said town is hereby authorized to take and hold,
2 as for public uses, by purchase or otherwise, any land or
3 interest therein or water rights necessary for erecting and
4 maintaining dams, for flowage, for power for pumping its
5 water supply through its mains, for reservoirs, for pre-
6 serving the purity of the water and water shed, for laying
7 and maintaining aqueducts and other structures for taking,
8 distributing, discharging and disposing of water and for
9 rights of way or roadways to its sources of supply, dams,
10 power stations, reservoirs, mains, aqueducts, structures and
11 lands.

Sect. 3. Said town is hereby authorized to lay in and
2 through the streets, roads, ways and highways of the said
3 town of Winthrop and across private lands therein, and to
4 maintain, repair, and replace all such pipes, aqueducts, con-
5 duits and fixtures as may be necessary and convenient for
6 the purposes herein designated, and whenever said town
7 shall lay any pipes, conduits or aqueducts in any street,
8 roadway or highway it shall cause the same to be done with
9 as little obstruction as practicable to the public travel, and
10 shall at its own expense, without unreasonable delay, cause
11 the earth and pavement removed by it to be replaced in
12 proper condition.

Sect. 4. Said town is hereby authorized to erect and main-
2 tain all dams, reservoirs and structures necessary and con-
3 venient for the purposes designated under this act.

Sect. 5. In exercising any right of eminent domain con-

2 ferred upon it by law, from time to time, or any right of
3 eminent domain through or under the franchises of the
4 water companies by it acquired, said town shall file in the
5 office of the county commissioners of the county where such
6 lands or water rights are situated and record in the regis-
7 try of deeds in said county, plans of the location of all
8 lands or interest therein or water rights, to be taken, with
9 an appropriate description and the names of the owners
10 thereof, if known. When for any reason said town fails
11 to acquire the property authorized to be taken, and which
12 is described in such location, or the location recorded is
13 defective or uncertain, it may, at any time, correct and per-
14 fect such location and file a new description thereof, and
15 in such case the town is liable in damages only for property
16 for which the owner had not previously been paid, to be as-
17 sessed as of the time of the original taking, and the town
18 shall not be liable for any acts which would have been justi-
19 fied if the original taking had been lawful. No entry shall
20 be made on any private lands, except to make surveys, un-
21 til ten days shall have elapsed after the date of such filing,
22 whereon possession may be had of all said lands or inter-
23 ests therein or water rights so taken, but title thereto shall
24 not vest in said town until payment therefor.

Sect. 6. If any person sustaining damages by any taking
2 as aforesaid, shall not agree with said town upon the sum
3 to be paid therefor, either party, upon petition to the coun-
4 ty commissioners of the county where said lands or water

5 rights are situated, may have said damages assessed by
6 them; the residence of any of said commissioners in said
7 town shall not disqualify him from serving on such board
8 of county commissioners to assess said damages; the pro-
9 cedure and all subsequent proceedings and right of appeal
10 thereon shall be under the same restriction, conditions and
11 limitations as are or may be by law prescribed in the case
12 of damages by the laying out of highways.

Sect. 7. In case of any crossing of a railroad, unless con-
2 sent is given by the company owning or operating such
3 railroad as to place, manner and conditions of the crossing,
4 within thirty days after such consent is requested by said
5 town, the railroad commissioners, or in case that at that
6 time there is no board of railroad commissioners, then such
7 officials as by law succeed to the general duties now exer-
8 cised by said railroad commissioners, shall determine the
9 place, manner and condition of such crossing; and all work
10 within the limits of such railroad location shall be done
11 under the supervision and to the reasonable satisfaction of
12 such railroad company, but at the expense of the said town.

Sect. 8. All the affairs of said town relating to the man-
2 agement and conduct of the business incident to the main
3 object of this act shall be managed by a board of three
4 commissioners, all of whom shall be residents of Winthrop
5 and shall be styled "Water Commissioners of Winthrop."
6 They shall be appointed by the municipal officers of the
7 town of Winthrop. As soon as convenient after the mem-

8 bers of said water commission have been chosen as afore-
9 said, said water commissioners shall hold a meeting and
10 organize by the election of a president and clerk, adopt a
11 seal, and may appoint all needful agents for the proper
12 conduct and management of the affairs imposed upon said
13 board of water commissioners. At said first meeting, they
14 shall determine by lot the term of office of each commis-
15 sioner so that one shall serve for one year, one for two years
16 and one for three years, and whenever the term of office
17 of a commissioner expires his successor shall be appointed
18 by the municipal officers of said town of Winthrop to serve
19 for the full term of three years, and in case any other va-
20 cancy arises it shall be filled in like manner for the unex-
21 pired term. All such commissioners shall be eligible to re-
22 appointment, but no selectman of said town of Winthrop
23 shall at any time be eligible to such office; said commis-
24 sioners may also ordain and establish such by-laws and rules
25 as are necessary for their own convenience and the proper
26 management of the affairs under their charge. The term
27 of office of said commissioners first appointed shall be con-
28 sidered to date from the first Monday of April in the year
29 nineteen hundred and thirteen; said water commissioners
30 may procure an office and incur such expenses as may be
31 necessary. Each member shall receive in full compensa-
32 tion for his services an allowance of one hundred dollars
33 per annum, or such other less sum as the said town at any
34 legal town meeting, acting under an article in the warrant

35 therefor relating to such compensation, may prescribe. At
36 the close of each fiscal year said water commissioners shall
37 make a detailed report of their doings, of the receipts and
38 expenditures coming under their control and of such other
39 matters pertaining to their duties as shall show said town
40 how said commissioners are fulfilling the obligations of
41 their trust, such reports to be made and filed with the muni-
42 cipal officers of Winthrop.

Sect. 9. Said town of Winthrop is hereby authorized and
2 empowered to acquire by purchase or by the exercise of the
3 right of eminent domain, which right is hereby expressly
4 delegated to said town for said purpose, the entire plants,
5 properties, franchises, rights and privileges of the Hillside
6 Water Company, and also of the Winthrop Water and
7 Drainage Company, except their cash assets, and also the
8 entire plant, franchises, rights and privileges of Charles H.
9 Gale so far as the same pertain to his water system and
10 plant in said Winthrop, including all lands, waters, water
11 rights, dams, structures, reservoirs, pipes, machinery, fix-
12 tures, hydrants, tools and all apparatus and appliances owned
13 by said water companies and by said Gale and used or
14 usable in supplying water in the town of Winthrop, together
15 with all real estate so used or usable. Said water com-
16 panies are hereby authorized to sell and transfer their re-
17 spective franchises and properties to said town. Said town
18 is authorized to construct, install, operate and maintain, in
19 connection with its said water system, a sewerage system and

20 plant with all the appurtenances thereto throughout the en-
21 tire village of said town and the discharge from the pipes
22 and conduits thereof may be into the waters below the mill
23 stream, so called.

Sect. 10. In case said water commissioners of Winthrop
2 fail to agree with the aforesaid companies, to wit, the said
3 Hillside Water Company and the Winthrop Water and
4 Drainage Company, and with Charles H. Gale, any or all
5 of them, upon terms of purchase within sixty days after the
6 approval of this act by a majority vote of the legal voters
7 of said town of Winthrop as mentioned in section 16 hereof,
8 then said town, through said water commissioners, is hereby
9 authorized to take the plants, properties and franchises of
10 the aforesaid companies and of the said Gale as authorized
11 in section nine as for public uses, by petition therefor in the
12 manner provided hereinafter wherein such companies and
13 the said Gale shall be parties defendant, and, for the pur-
14 poses of designation hereinafter, are referred to as and by
15 the term "parties defendant." And said town, through its
16 water commissioners, is authorized on or before November
17 fifteenth, nineteen hundred and fourteen, to file a petition
18 in the clerk's office of the supreme judicial court for the
19 county of Kennebec, in term time or in vacation, addressed
20 to any justice thereof, who, after notice to said parties de-
21 fendant and their mortgagees, if any there may be, shall,
22 after hearing and within thirty days after the filing of said
23 petition appoint three disinterested appraisers, none of whom

24 shall be residents of the county of Kennebec, one at least
25 of whom shall be learned in the law, for the purpose of fix-
26 ing the valuation of the plants, franchises, and properties of
27 said parties defendant, as described in section nine. Said
28 petition shall not be dismissed after filing but may be and
29 shall be amended in any manner to enable the court to
30 make all necessary decrees thereon. At the hearing afore-
31 said, such justice, upon motion of the petitioner, may order
32 the production and filing in court, for the inspection of the
33 petitioner, of all books and papers pertinent to the issue to
34 be heard by said appraisers, the terms and conditions of so
35 producing and filing such books and papers to be deter-
36 mined by said justice in his order therefor and to be en-
37 forced from time to time as any justice of said supreme
38 judicial court, in term time or in vacation, upon motion of
39 any party to said cause, may deem reasonable and proper
40 in the premises. At such hearing, such justice, upon mo-
41 tion of the petitioner, may fix a time at which the said
42 parties defendant shall file in the clerk's office of the su-
43 preme judicial court for the county of Kennebec, for the
44 inspection of the petitioner, the following: First, sched-
45 ules showing the names, residence and water service of each
46 customer on September fifteenth, nineteen hundred and thir-
47 teen, with the rate charged therefor; second, copies of all
48 contracts in force on said September fifteenth; third, an
49 itemized statement of the gross income earned during its
50 last fiscal year and all operating expenses and fixed charges

51 paid or incurred during such year and properly chargeable
52 thereto; fourth, a memorandum of all real estate, or inter-
53 est therein, owned or controlled on said September fifteenth,
54 with such brief description thereof, as will reasonably iden-
55 tify the same; fifth, a memorandum of all water rights used
56 or owned on said September fifteenth with a brief descrip-
57 tion thereof and a concise statement of the method of ac-
58 quiring the same; sixth, a description of all buildings and
59 structures owned in whole or in part on said September fif-
60 teenth which are a part of the plants of the parties defend-
61 ant; seventh, descriptions of all reservoirs owned on said
62 September fifteenth; eighth, a description of all pipes, ser-
63 vice pipes, hydrants, gates, gate boxes, shut-off boxes, fix-
64 tures and machinery, and all the physical elements in such
65 water system, giving in detail all quantities, sizes and lengths
66 and specifying the streets, roads or ways where situated;
67 ninth, an itemized list of tools, appliances and apparatus
68 used or usable in supplying water on said September fif-
69 teenth. Such orders may be enforced from time to time
70 by any justice of said supreme judicial court in term time
71 or in vacation, upon motion of either party, as such justice
72 may deem reasonable and proper in the premises. At such
73 hearing the justice then sitting may, upon motion of the
74 petitioner, make all such decrees as he deems reasonable
75 and proper to enable the petitioner, through its servants and
76 employees, to ascertain the condition of the mains and pipes
77 of the said defendants named in section nine, externally

78 and internally, all work connected therewith to be in the
79 presence of the agents of the parties defendant, but wholly
80 at the expense of said town of Winthrop, said decree to
81 fix the number of such examinations and to impose such
82 conditions as may to the court seem just and proper in the
83 premises. The said appraisers shall have the power of
84 compelling attendance of witnesses and the production of
85 books and papers pertinent to the issue and may administer
86 oaths; and any witness or person in charge of such books
87 or papers refusign to attend or to produce the same shall
88 be subject to the same penalties and proceedings, so far
89 as applicable, as witnesses summoned to attend the supreme
90 judicial court. Depositions may be taken as in civil ac-
91 tions. The said appraisers may appoint a sufficient number
92 of stenographers to enable a full report of the proceedings
93 of each day to be in readiness for use the following day,
94 each of said appraisers to so have one copy thereof, and
95 the parties to receive such number of copies as the apprais-
96 ers may deem necessary. The compensation and expenses
97 of said stenographers shall be taxed and allowed by the
98 appraisers and be paid and borne as hereinafter provided.
99 Their reports, certified by said appraisers as correct, shall
100 be filed with the award to be made by said appraisers and
101 shall be legal evidence of all proceedings so reported. They
102 shall make full report as required in trials had in the su-
103 preme judicial court. The appraisers so appointed shall,
104 after due notice and hearing, fix the valuation of the

105 plants, properties and franchises of said parties defend-
106 ant at what they are fairly and equitably worth so that
107 said parties defendant shall receive just compensation for
108 the same. The day when the petition mentioned in sec-
109 tion 10 hereof is filed shall be the date as of which the valu-
110 ation aforesaid shall be fixed, from which date interest
111 on said award at the rate of six per centum per annum
112 shall run and all net profits and rents accruing thereafter
113 shall belong to said town of Winthrop. The report of
114 said appraisers or of a majority of them shall be filed in
115 said clerk's office within six months after their appoint-
116 ment, but, if at the expiration of said six months the hear-
117 ing before said appraisers should then be in progress and
118 unfinished, their report may be so filed within thirty days
119 after the close of said hearing. After said report is filed,
120 such single justice, so appointing said appraisers, or in
121 case of his inability to act, then any justice designated for
122 the purpose by the chief justice, may, after notice and
123 hearing, confirm or reject the same or recommit, if justice
124 so requires, and in case of such rejection or recommitment
125 such justice may fix the times for new hearings and new
126 report thereon. The award of the appraisers shall be con-
127 clusive as to valuations. Upon confirmation of their re-
128 port, the court so sitting, in term time or in vacation, shall
129 thereupon, after hearing, make final decree upon the whole
130 matter, including the transfer of the properties and fran-
131 chises, jurisdiction of which is hereby conferred with the

132 same power to enforce said decree as in equity cases. All
133 the costs and expenses arising under said petition and
134 appraisal shall be paid and borne as directed by the court
135 in said final decree. The findings of such justice as to
136 such costs and expenses and their apportionment shall be
137 final. In all other matters the justice so making such final
138 decree, shall, upon request of any of the parties, make
139 separate findings of law and fact. All such findings of
140 fact shall be final, but any party aggrieved may take ex-
141 ceptions to any rulings of law so made, the same to be
142 accompanied by only such parts of the case as are nec-
143 essary to a clear understanding of the questions raised
144 thereby. Such exceptions shall be claimed on the docket
145 within ten days after such final decree is signed, entered
146 and filed, and notice thereof has been given by the clerk
147 to the parties or their counsel, and said exceptions so
148 claimed shall be made up, allowed and filed within said
149 time unless further time is granted by the court or by
150 agreement of the parties. They shall be entered at the
151 next term of the law court to be held after the filing of
152 such exceptions and there heard unless otherwise agreed,
153 or the law court for good cause order a further time for
154 hearing thereon. Upon such hearing the law court may
155 confirm, reverse or modify the decree of the court below
156 or remand the cause for further proceedings, as it seems
157 proper. During the pendency of such exceptions the cause
158 shall remain on the docket of the court below, marked

159 “law” and decree shall be entered thereon by a single jus-
160 tice, in term time or in vacation, in accordance with the
161 certificate and opinion of the law court. Before the afore-
162 said plants, properties and franchises are transferred in
163 accordance with such final decree, and before the pay-
164 ment therefor, the court sitting in said county of Ken-
165 nebec, by a single justice thereof, as hereinbefore pro-
166 vided, shall, upon motion of any party, after notice and
167 hearing, take account of all receipts and expenditures prop-
168 erly had and incurred by said water companies and by said
169 Gale belonging to the period from and after the day when
170 the petition mentioned in section 10 is filed, and all net rents
171 and profits accruing thereafter, and shall order the net bal-
172 ance due to any party to be added to or deducted from the
173 amount to be paid under the final decree, as the case may
174 be. All findings of law or fact by such single justice at
175 such hearings shall be final. The amount to be paid for
176 the plant of each of the said parties defendant shall be paid
177 to the trustee of the mortgage of each respective company,
178 if any there may be. On payment or tender by its certi-
179 fied check drawn upon a reliable trust company or national
180 bank by said town of Winthrop of the amount so fixed and
181 the performance of all other terms and conditions so im-
182 posed by the court, the entire plants, properties and fran-
183 chises of said parties defendant as described in section one
184 shall become vested in said town of Winthrop. After the
185 filing of said petition, it shall not be discontinued or with-

186 drawn by said town and the said parties defendant, to wit:
187 said Hillside Water Company, the Winthrop Water and
188 Drainage Company and Charles H. Gale, may thereafter-
189 wards cause said valuation to be made as herein provided,
190 and shall be entitled to appropriate process to compel said
191 town to perform the terms of the final decree and pay for
192 said plants, properties and franchises in accordance there-
193 with. If a vacancy occurs at any time in said board of ap-
194 praisers, from any cause, any justice of the supreme judi-
195 cial court, sitting in said county of Kennebec, may, in term
196 time or in vacation, after notice and hearing, appoint a new
197 appraiser or appraisers and make all such orders for hear-
198 ing said cause by the appraisers anew or for any extension
199 of time for making their award, or otherwise, as the cir-
200 cumstances of the case may require.

Sect. 11. All valid contracts, made in good faith, existing
2 on the fifth day of February, nineteen hundred and thirteen,
3 between said parties defendant and any person or corpora-
4 tion for supplying water within the said town of Winthrop,
5 shall be assumed and carried out by said town of Win-
6 throp.

Sect. 12. For accomplishing the purposes of this act, said
2 town, through its said water commissioners, is authorized
3 to borrow money temporarily and to issue therefor the in-
4 terest-bearing negotiable notes of the said town of Win-
5 throp, and for the purpose of paying or refunding the in-
6 debtedness so created, of paying any necessary expenses or

7 liabilities, incurred under the provisions of this act, including
8 the expenses incurred in the acquiring of the plants of said
9 parties defendant, by purchase or otherwise, or in the pur-
10 chase or acquisition of the properties and franchises of said
11 parties defendant, of securing sources of supply, taking
12 waters and lands, paying damages, laying pipes, constructing,
13 maintaining and operating a water plant and making renew-
14 als, extensions, additions and improvements to the same and
15 other expenses properly incurred in carrying out the pro-
16 visions of this act, the said town, through its water commis-
17 sioners, may from time to time issue bonds of the town to
18 an amount which, taken in connection with the other indebt-
19 edness of the town of Winthrop, will not exceed the amount
20 limited by the constitution of Maine. And such bonds shall
21 be signed by said board of water commissioners of Win-
22 throp and the treasurer of said town, but the coupons need
23 be signed by said treasurer only, and shall be designated
24 and marked "The Winthrop Water Loan." Said notes and
25 bonds shall be legal obligations of said town and shall be
26 legal investments for savings banks.

Sect. 13. The property of said town shall be exempt from
2 all taxation in any towns or cities where any part of its
3 water plant may be located.

Sect. 14. All individuals, firms and corporations, whether
2 private, public or municipal, shall pay to the treasurer of
3 said town the rates established by said board of water com-
4 missioners for the water used by them, and said rates shall

5 be reasonable and uniform. Said town of Winthrop shall
6 annually raise by assessment upon the property within said
7 town in the same manner as is provided by law for the as-
8 sessment of county and town taxes a sum of money, which,
9 taken together with the revenue and income in this section
10 hereinbefore mentioned, shall be used and appropriated to
11 the following purposes and uses :

I. To pay the current expenses for operating and main-
13 taining said system.

II. To provide for the payment of the interest on the in-
15 debtedness created by the said town.

III. To provide each year a sum equal to not less than
17 one-half of one per centum nor more than five per centum
18 of the entire indebtedness created, as aforesaid, by said
19 town, which sum shall be turned into a sinking fund and
20 there kept to provide for the extinguishment of said indebt-
21 edness. The money set aside for the sinking fund shall be
22 devoted to the retirement of the obligations of said town,
23 created as aforesaid, or invested in such securities as sav-
24 ings banks are allowed to hold.

Sect. 15. All incidental powers, rights and privileges nec-
2 essary to the accomplishment of the main objects herein set
3 forth are granted to said town of Winthrop.

Sect. 16. This act shall take effect when approved by a
2 majority vote of the legal voters of the town of Winthrop
3 voting by ballot at an election to be specially called and held
4 for the purpose on the fourth Saturday of July, nineteen

5 hundred thirteen. Such election shall be called, warned
6 and conducted according to the law relating to municipal
7 elections in said town, provided, however, that the select-
8 men of said town shall not be required to prepare for post-
9 ing or the town clerk to post a new list of voters, and for
10 the purpose of registration of voters said selectmen shall be
11 in session the secular day next preceding such special elec-
12 tion. The town clerk shall reduce the subject matter of this
13 act to the following question: "Shall the act to supply the
14 town of Winthrop with pure water be accepted?" and the
15 voters shall indicate by a cross over the words "Yes" or
16 "No" their opinion of the same. The result shall be de-
17 clared by the selectmen and due certificate thereof filed by
18 the town clerk with the secretary of state. In case this act
19 is not approved by a majority vote of the legal voters of
20 said Winthrop, present and voting, on said fourth Saturday
21 of July, nineteen hundred and thirteen, it may be approved
22 at any subsequent meeting of the legal voters of said town
23 held not later than the third Saturday of August, nineteen
24 hundred and fourteen, by a majority vote of said voters, said
25 subsequent meeting or meetings to be called, advertised and
26 conducted in the same manner as the meeting held on the
27 fourth Saturday of July, nineteen hundred and thirteen, pro-
28 vided, however, that any meeting or meetings held subse-
29 quent to said fourth Saturday of July, nineteen hundred and
30 thirteen, shall be called only by the selectmen of said Win-

31 throp upon petition therefor signed by at least twenty legal
32 voters of said town.

Sect. 17. Sections one, two, three, four, five, six, seven
2 and eight shall be inoperative, null and void unless the said
3 town of Winthrop shall acquire by purchase the plants, prop-
4 erties and franchises of said Hillside Water Company, of
5 said Winthrop Water and Drainage Company and of said
6 Charles H. Gale, or shall first file in the office of the clerk
7 of the supreme judicial court the petition mentioned in sec-
8 tion ten hereof for the exercise of the right of eminent do-
9 main as in this act provided with a bona fide intent to ac-
10 quire the plants, properties and franchises of said Hillside
11 Water Company, of said Winthrop Water and Drainage
12 Company and of said Charles H. Gale.

Sect. 18. This act shall take effect in ninety days after the
2 final adjournment of the legislature, so far as necessary to
3 empower the calling and holding of the elections authorized
4 in section sixteen herein provided for.