

# MAINE STATE LEGISLATURE

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SEVENTY-SEVENTH LEGISLATURE

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HOUSE

NO. 8

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*In House of Representatives, Jan. 21, 1915.*

*Ordered, that five hundred copies be printed, and that the same be referred to the Committee on Judiciary.*

*Committee on Reference.*

*Presented by Mr. Waterhouse of Kennebunk.*

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND FIFTEEN

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AN ACT to Incorporate the Kennebunk Water District.

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

Section 1. The territory and people constituting the Town  
2 of Kennebunk shall constitute a body politic and corporate  
3 under the name of the Kennebunk Water District, for the  
4 purposes of supplying the inhabitants of said district and  
5 municipality with pure water for domestic and municipal  
6 purposes.

Sect. 2. Said District is hereby authorized for the pur-  
2 poses aforesaid, to take, hold, divert, use and distribute suf-

3 ficient water of any surface or underground brooks, streams  
4 and springs in said District, and said District is hereby spe-  
5 cially authorized to take water from Kennebunk pond, so  
6 called, in the town of Lyman, in the County of York, and  
7 also from the Branch Brook, so called, which is on the di-  
8 viding line between Kennebunk and the Town of Wells in  
9 said County, and may take and hold by purchase or other-  
10 wise any land or real estate necessary for erecting dams,  
11 power, reservoirs, or for preserving the purity of the water  
12 and water shed, and for laying and maintaining aqueducts  
13 for taking, discharging and disposing of water, and for  
14 rights of way to its sources of supply, dams, power station,  
15 reservoirs, mains, aqueducts, structures and lands.

Sect. 3. Said district shall be liable for all damages that  
2 shall be sustained by any persons or corporations in their  
3 property by the taking of any land whatsoever, or water, or  
4 by flowage, or by excavating through any land for the pur-  
5 pose of laying pipes, building dams or constructing reser-  
6 voirs. If any person sustaining damage as aforesaid and  
7 said corporation shall not mutually agree upon the sum  
8 to be paid therefor, such person may cause his damages to  
9 be ascertained in the same manner and under the same  
10 conditions, restrictions and limitations as are or may be  
11 prescribed in the case of damages by the laying out of  
12 highways.

Sect. 4. Said district is hereby authorized to lay in and  
2 through the streets and highways thereof, and to take up,  
3 repair and replace all such pipes, aqueducts and fixtures as  
4 may be necessary for the objects above set forth, and when-  
5 ever said district shall lay any pipes or aqueducts in any  
6 street or highway it shall cause the same to be done with as  
7 little obstruction as possible to the public travel, and shall  
8 at its own expense without unnecessary delay cause the  
9 earth and pavement removed by it to be replaced in proper  
10 condition.

Sect. 5. In case of any crossing of a railroad, unless con-  
2 sent is given by the company owning or operating such rail-  
3 road as to place, manner and condition of the crossing with-  
4 in thirty days after such consent is requested by said district,  
5 the Public Utilities Commission shall determine the place,  
6 manner and condition of such crossing, and all work within  
7 the limits of said railroad location shall be done under the  
8 supervision and to the satisfaction of said railroad company,  
9 but at the expense of said district.

Sect. 6. All the affairs of said district shall be managed  
2 by a board of trustees of three members, to be elected by a  
3 plurality vote of the legal voters within said district, at an  
4 election to be specially called and held within thirty days  
5 after the approval of this act by the legal voters of said  
6 district. Such special election shall be called, held and con-  
7 ducted in the same manner as town meetings are now called  
8 and held. All records of the meeting and other business

9 of the district shall be kept by a clerk. As soon as con-  
10 venient after the members of said board have been chosen,  
11 said trustees shall hold a meeting at the town hall at Ken-  
12 nebunk, and organize by the election of a President and  
13 Clerk, adopt a corporate seal, and when necessary, choose a  
14 Treasurer, and all other needful officers and agents for the  
15 proper conduct and management of the affairs of said dis-  
16 trict. At said first meeting they shall determine by lot the  
17 term of office of each trustee, so that one shall serve for one  
18 year, one for two years, and one for three years, and there-  
19 after the term of office of each trustee shall be three years,  
20 the term of office of each trustee expiring on the date of  
21 the succeeding annual town meeting, and thereafter one  
22 trustee shall be elected each year at the annual town meet-  
23 ing, and in case of any vacancy arising in said board of  
24 trustees, the vacancy shall be filled in a like manner for the  
25 unexpired term. Said trustees may ordain and establish  
26 such by-laws as are necessary for their own convenience  
27 and the proper management of the affairs of the district.  
28 Such trustees may procure an office and incur such expenses  
29 as may be necessary. Each trustee shall receive in full com-  
30 pensation for his services an allowance of the sum of One  
31 Hundred Dollars per annum.

Sect. 7. Said water district is hereby authorized and em-  
2 powered to acquire by purchase or by the exercise of the  
3 right of eminent domain, which right is hereby expressly

4 delegated to said water district for such purpose, the entire  
5 plant, property and franchises, rights and privileges now  
6 held by the Mousam Water Company, within said district,  
7 excepting the exclusive right to draw and take water from  
8 Branch Brook, so called, excepting the pumping station and  
9 lands adjoining thereto, the water main leading down the  
10 Kennebunkport road, so called, to Kennebunkport for pur-  
11 pose of supplying Kennebunkport with water, and the  
12 stand pipe or reservoir stationed in Kennebunk village, but  
13 including all other lands, waters, water rights, dams, reser-  
14 voirs, pipes, machinery and fixtures, hydrants, apparatus  
15 and appliances in said district, owned by said company and  
16 used in supplying water therein. Said Mousam Water  
17 Company is hereby authorized to sell and transfer its fran-  
18 chises and properties within the town of Kennebunk as  
19 above mentioned, to said water district.

Sect. 8. In case said trustees shall fail to agree with said  
2 Mousam Water Company upon the terms of purchase of  
3 the above mentioned property on or before January 1,  
4 1916, said water district, through its trustees is hereby au-  
5 thorized to take said plant, property and franchises as for  
6 public uses by petition therefor in the manner hereinafter  
7 provided. Said water district through its trustees is hereby  
8 authorized on or after January 1, 1916, to file a petition in  
9 the Clerk's office of the Supreme Judicial Court for the  
10 County of York, in term time or in vacation, addressed to  
11 any Justice of said Court, who after notice to said Mousam

12 Water Company and its mortgagees, shall after hearing and  
13 within thirty days after the filing of said petition, appoint  
14 three disinterested appraisers, none of whom shall be resi-  
15 dents of the town of Kennebunk, one of whom shall be  
16 learned in the law, for the purpose of fixing the valuation  
17 of said plant, property and franchise, and of assessing the  
18 additional damages, if any, suffered by the Mousam Water  
19 Company by reason of the taking of said plant, property  
20 and franchises, and of the severance thereof from the entire  
21 water system and franchises as now operated by said com-  
22 pany; it being the intent of this act that the amount of  
23 said valuation and of said additional damages, if any, taken  
24 together, shall be so fixed as to equal the difference between  
25 the valuation, before severance, of the entire plant, prop-  
26 erty and franchises of said Mousam Water Company, and  
27 the valuation, after severance, of the plant, property and  
28 franchises of said Mousam Water Company in the towns  
29 of Wells and Kennebunkport. Said valuation to be deter-  
30 mined under the principles of eminent domain. At the  
31 hearing aforesaid, such Justice, upon motion of the peti-  
32 tioner, may order the production and filing in court, for the  
33 inspection of the petitioner, of all books, plans and papers,  
34 and a statement of the true condition of the mains and pipes  
35 of said water company externally or internally, and all other  
36 evidences which are pertinent to the issue and necessary for  
37 a full understanding of the matter to be heard by said ap-  
38 praisers, the terms and conditions of so producing and filing

39 such books, plans and papers or other evidence to be deter-  
40 mined by said Justice in his order therefor, and at a time  
41 to be fixed by said Justice and to be enforced from time to  
42 time as said Justice in term time or in vacation may deem  
43 reasonable and proper. The said appraisers shall have the  
44 power of compelling the attendance of witnesses and the  
45 production of books and papers pertinent to the issue, and  
46 may administer oaths; and any witness or person in charge  
47 of such books and papers refusing to attend, or procure the  
48 same shall be subject to the same penalties and proceedings,  
49 so far as applicable, as witnesses summoned to attend the  
50 supreme Judicial Court. The appraisers so appointed shall,  
51 after due notice and hearing, fix all the valuations of plants,  
52 properties and franchises, and assess all damages, if any,  
53 in the manner heretofore detailed by this act, so that said  
54 Mousam Water Company shall receive just compensation  
55 for the taking of the Kennebunk portion of its plant, prop-  
56 erty and franchises, and for the severance thereof from the  
57 entire water system and franchises above described. The  
58 first day of January, 1916, shall be the date as of which  
59 the valuation aforesaid shall be fixed, from which day inter-  
60 est on said award shall run, and all net rents and profits ac-  
61 cruing thereafter shall belong to said water district. The  
62 report of said appraisers, or of a majority of them, shall be  
63 filed in said Clerk's office in term time or vacation, as soon  
64 as may be after their appointment, and such single Justice,

65 or in case of his inability to act, then any Justice designated  
66 for the purpose by the Chief Justice, may, after notice and  
67 hearing, confirm or reject the same, or recommit it if justice  
68 so requires. The award of the appraisers shall be con-  
69 clusive as to valuations and damages. Upon the confirm-  
70 ation of said report the Court so sitting shall thereupon,  
71 after hearing, make final decree upon the entire matter,  
72 including the application of the purchase money, discharge  
73 of encumbrances and transfer of the property, jurisdiction  
74 over which is hereby conferred, with the same power to  
75 enforce said decree as in equity cases. Upon request of  
76 either party the Justice so making such final decree shall  
77 make separate findings of law and fact. All such findings  
78 of fact shall be final, but either party aggrieved may take  
79 exceptions to any rulings of law so made, the same to be  
80 accompanied only by such parts of the case as are neces-  
81 sary to a clear understanding of the questions raised thereby.  
82 Such exceptions shall be claimed on the docket within ten  
83 days after such final decree is signed, entered and filed, and  
84 notice thereof has been given by the clerk to the parties or  
85 their counsel, and said exceptions so claimed shall be made  
86 up, allowed and filed within said time unless further time is  
87 granted by the court or by agreement of parties. They  
88 shall be entered at the next term of the law court to be held  
89 after the filing of said decree and there heard, unless other-  
90 wise agreed, or the law court shall for good cause order a  
91 further time for hearing thereon. Upon such hearing the law

92 court may confirm, reverse or modify the decree of the court  
93 below, or remand the cause for further proceedings as it  
94 deems proper. During the pendency of such exceptions the  
95 cause shall remain on the docket of the court below marked  
96 "law" and decree shall be entered thereon by a single justice  
97 in term time or in vacation, in accordance with the certificate  
98 and opinion of the law court. Before said plant, property  
99 and franchises are transferred in accordance with such final  
100 decree, and before payment therefor, the court sitting in  
101 said county of York, by single Justice thereof as hereinbe-  
102 fore provided, shall, upon motion of either party, after no-  
103 tice and hearing, take account of all receipts and expendi-  
104 tures properly had or incurred by Mousam Water Com-  
105 pany belonging to this period, from and after January first,  
106 nineteen hundred sixteen, and all net rents and profits ac-  
107 cruing thereafter, and shall order the net balance to be  
108 added to, or deducted from, the amount to be paid under  
109 such final decree, as the case may be. All findings of law  
110 or fact by such single Justice at such hearing shall be  
111 final. On payment or tender by said district of the amount  
112 so fixed, including such additional damages, if any, and  
113 the performance of all other terms and conditions so im-  
114 posed by the court, said entire plant, property and fran-  
115 chises situated in Kennebunk, excluding the exceptions  
116 mentioned in section two, shall become vested in said water  
117 district and be free from all liens, mortgages and incum-

118 brances theretofore created by the Mousam Water Com-  
119 pany. After the filing of said petition it shall not be dis-  
120 continued or withdrawn by said water district, and the  
121 said Mousam Water Company may thereafterwards on its  
122 part cause said valuation and assessment to be made as  
123 herein provided and shall be entitled to appropriate pro-  
124 cess to compel said water district to perform the terms of  
125 the final decree, and to pay for said plant, property and  
126 franchises in accordance therewith.

Sect. 9. All valid contracts now existing between the  
2 Mousam Water Company and any persons or corporations  
3 for supplying water within said district shall be assumed  
4 and carried out by the said Kennebunk Water District.

Sect. 10. For accomplishing the purposes of this act, said  
2 water district, through its trustees is authorized to issue its  
3 bonds to an amount sufficient to procure funds to pay all  
4 the expenses incurred in the acquisition of the property of  
5 said Mousam Water Company, and the purchase thereof,  
6 and for further extensions, additions and improvements of  
7 said plant, and to secure a new source of supply. Should  
8 the trustees so determine said district is authorized to bor-  
9 row money temporarily and to issue therefor the interest  
10 bearing notes of said district in an amount for any of the  
11 above named purposes, and for the refunding of said notes  
12 may issue the bonds of said district as above set forth. Said  
13 notes or bonds shall be a legal obligation of said water dis-

14 trict, which is hereby declared to be a quasi municipal cor-  
15 poration within the meaning of Section 96, Chapter 47 of  
16 the Revised Statutes, and all the provisions of said section  
17 shall be applicable thereto. Said notes and bonds shall be  
18 a legal investment for savings banks.

Sect. 11. All individuals, firms and corporations, wheth-  
2 er public, private or municipal, shall pay to the Treasurer  
3 of said district the rates established by the said board of  
4 trustees for the water used by them, and said rates shall be  
5 uniform within the district. Said rates shall be so estab-  
6 lished as to provide a revenue for the following purposes.

I. To pay the current running expenses for maintaining  
8 the water system, and provide for such extensions and re-  
9 newals as may become necessary.

II. To provide for the payment of interest on the indebt-  
11 edness of said district.

III. To provide each year a sum equal to not less than  
13 one half of one nor more than four per cent. of the entire  
14 indebtedness of the district, which sum shall be turned into  
15 a sinking fund to provide for the final extinguishment of  
16 the funded debt. The money set aside for the sinking fund  
17 shall be devoted to the retirement of the obligations of the  
18 district, or invested in such securities as savings banks are  
19 allowed to hold.

Sect. 12. The property of said district shall be exempt  
2 from taxation.

Sect. 13. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sect. 14. This act shall take effect when approved by a majority vote by ballot of the inhabitants of said district, a special meeting to be called and held for that purpose, same to be held within six months from the date of the adjournment of the legislature in which this act is passed. Such special meeting, or other meeting, shall be called by the selectmen of Kennebunk conducted according to the law relating to town meetings in said Kennebunk, provided, however, that the board of selectmen shall not be required to prepare, or the town clerk to post a new list of voters, and for this purpose said board shall be in session the three secular days next preceding such meeting. The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Kennebunk Water District be accepted?" And the voters shall indicate by a cross placed against the words "yes" and "no" their opinion of the same. The result shall be declared by the selectmen of Kennebunk and due certificate thereof filed by the town clerk with the Secretary of State.

Sect. 15. Sections two, three and four of this act shall be inoperative, null and void, unless the said water district shall first acquire by purchase, or by the exercise of the right of eminent domain, as in this act provided, the plant, property

5 and franchises, rights and privileges now held by the  
6 Mousam Water Company within said district, as detailed in  
7 paragraph two hereof.

Sect. 16. The costs and expenses arising under the pro-  
2 visions of this act shall be paid and borne as directed by the  
3 Court in the final decree provided in section eight.

Sect. 17. The trustees of said Kennebunk Water District  
2 shall each year prepare a detailed report for the past year  
3 of their doings, of the receipts and expenditures of said  
4 water district, of its financial and physical condition and  
5 of such other matters and things pertaining to the said cor-  
6 poration as shall show the inhabitants of said district how  
7 the trustees of said water district are fulfilling the duties of  
8 their trust.

Sect. 18. This act shall take effect in ninety days after  
2 the adjournment of the legislature, so far as it is necessary  
3 to empower the calling and holding of the election herein  
4 authorized.