

MAINE STATE LEGISLATURE

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EIGHTIETH LEGISLATURE

SENATE

NO. 48

In Senate, February 10, 1921.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent down for concurrence.

L. ERNEST THORNTON, Secretary.

Presented by Senator Eaton of Oxford.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-ONE

AN ACT to Incorporate the Dixfield Water District.

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

Section 1. The following territory and the people within
2 the same, namely: that part of the town of Dixfield de-
3 scribed and known as the Dixfield Village Corporation and
4 such additions as may be made to it from time to time,
5 together with all other land owned by the Dixfield Light
6 & Water Company, for the purpose of protecting its water
7 shed and preserving the purity of its water supply, shall
8 constitute a public municipal corporation under the name
9 of the Dixfield Water District, for the purpose of supply-
10 ing the inhabitants of said district and also the several

11 towns of Dixfield and Mexico or any portion of either of
12 said towns, with pure water for domestic, sanitary and mu-
13 nicipal purposes.

Sect. 2. The said district, for the purpose of its incor-
2 poration, is hereby authorized to take, hold, divert, use
3 and distribute water from Aunt Hannah brook, so-called,
4 in the town of Dixfield, and from Podunk Pond, so-called,
5 in the town of Carthage.

Sect. 3. The said district, for the purposes of its incor-
2 poration, is hereby authorized to take and hold, as for pub-
3 lic uses, by purchase or otherwise, any land or interest
4 therein or water rights necessary for erecting and main-
5 taining dams, for flowage, for power for pumping its water
6 supply through its mains, for reservoirs, for preserving the
7 purity of its water and water shed, for laying and maintain-
8 ing aqueducts and other structures for taking, distributing,
9 discharging and disposing of water and for rights of way
10 or roadways to its sources of supply, dams, power stations,
11 reservoirs, mains, aqueducts, structures and lands.

Sect. 4. The said district is hereby authorized to lay pipes
2 in and through the streets, roads, ways and highways of
3 the towns named in sections one and two and to maintain,
4 repair and replace all such pipes, aqueducts and fixtures
5 as may be necessary and convenient for its corporate pur-
6 poses, and whenever said district shall lay any pipes or
7 aqueducts in any street, roadway or highway it shall cause
8 the same to be done with as little obstruction as practicable
9 to the public travel, and shall at its own expense, without

10 unnecessary delay, cause the earth and pavement removed
11 by it to be replaced in proper condition.

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

Sect. 6. 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 franchise of the light
4 and water company or companies by it acquired, the said
5 district shall file in the office of the county commissioners
6 of the county where such lands or water rights are situ-
7 ated and record in the registry of deeds in said county,
8 plans of the location of all lands or interest therein or wa-
9 ter rights, to be taken, with an appropriate description and
10 the names of the owner thereof, if known. When for any
11 reason the district fails to acquire the property authorized
12 to be taken, and which is described in such location, or
13 the location recorded is defective or uncertain, it may, at
14 any time, correct and perfect such location and file a new
15 description thereof, and in such case the district is liable
16 in damages only for the property for which the owner had
17 not previously been paid, to be assessed as of the time of
18 the original taking, and the district shall not be liable for
19 any acts which would have been justified if the original
20 taking had been lawful. No entry shall be made on any
21 private lands, except to make surveys, until the expiration

22 of ten days from such filing, whereon possession may be
23 had of all said lands or interests therein or water rights
24 so taken, but title thereto shall not vest in said district un-
25 til payment therefor.

Sect. 7. If any person sustaining damages by any tak-
2 ing as aforesaid, shall not agree with said district upon
3 the sum to be paid therefor, either party, upon petition
4 to the county commissioners of the county where said lands
5 or water rights are situated, may have said damages as-
6 sessed by them; the procedure and all subsequent proceed-
7 ings and right of appeal thereon shall be had under the
8 same restriction, conditions and limitations as are or may
9 be by law prescribed in the case of damages by the laying
10 out of highways.

Sect. 8. All the affairs of said water district shall be man-
2 aged by a board of trustees composed of three members,
3 chosen by the municipal officers of Dixfield. As soon as
4 convenient after the members of said board have been
5 chosen, said trustees shall hold a meeting and organize
6 by the election of a president and clerk, adopt a corporate
7 seal and when necessary may choose a treasurer and all
8 other needful officers and agents for the proper conduct
9 and management of the affairs of said district. At said
10 first meeting they shall determine by lot the term of of-
11 fice of each trustee so that one shall serve for one year,
12 one for two years and one for three years, and whenever
13 the term of office of a trustee expires, the body which ap-

14 pointed said trustee shall appoint a successor to serve the
15 full term of three years, and in case any other vacancy
16 arises it shall be filled in like manner for the unexpired
17 term. They may also ordain and establish such by-laws
18 as are necessary for their own convenience and the proper
19 management of the affairs of the district. The term of
20 office of said trustees first chosen shall be considered to
21 date from the first Monday of April, in the year of our
22 Lord nineteen hundred and twenty-one. Said trustees may
23 procure an office and incur such expenses as may be neces-
24 sary. Each member shall receive in full compensation for
25 his services an allowance of fifty dollars per annum. At
26 the close of each fiscal year the trustees shall make a de-
27 tailed report of their doings, of the receipts and expendi-
28 tures of said water district, of its financial and physical
29 condition, and of such other matters and things pertaining
30 to said district as shall show the inhabitants of said dis-
31 trict how said trustees are fulfilling the duties and obliga-
32 tions of their trust, such reports to be made and filed with
33 the municipal officers of the town of Dixfield.

Sect. 9. 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 said purposes, the en-
5 tire plant, property, franchises, rights and privileges now
6 held by the Dixfield Light & Water Company and intended,
7 used and provided by said company for the purposes of

8 supplying water for domestic or municipal purposes or
9 both, including all lands, waters, water rights, dams, reser-
10 voirs, pipes, machinery, fixtures, hydrants, tools and all ap-
11 **paratus and appliances** owned by said company, and used
12 or usable in supplying water in said district, together with
13 all real estate so used or usable. The said Dixfield Light
14 & Water Company is hereby authorized to sell and trans-
15 fer its franchises and property to said water district.

Sect. 10. In case the said trustees fail to agree with the
2 aforesaid company upon terms of purchase, on or before
3 September fifteenth, nineteen hundred and twenty-one, then
4 said water district, through its trustees, is hereby author-
5 ized to take the plant, property and franchises of the afore-
6 said company as authorized in section nine as for public
7 uses, by petition therefor in the manner provided wherein
8 such companies and their mortgagees shall be parties de-
9 fendant. And said water district, through its trustees, is
10 hereby authorized on or before November first, nineteen
11 hundred and twenty-one, to file a petition in the clerk's
12 office of the supreme judicial court for the county of Ox-
13 ford, in term time or in vacation, addressed to any jus-
14 tice thereof, who, after notice to said defendant company,
15 and its mortgagees, shall after hearing and within thirty
16 days after the filing of said petition appoint three disin-
17 terested appraisers, none of whom shall be residents of
18 the county of Oxford, one at least of whom shall be learned
19 in the law, for the purpose of fixing the valuation of the

20 plant, property and franchises of said defendant company
21 as described in section nine. Said petition shall not be
22 dismissed after filing but may and shall be amended in
23 any manner required to enable the court to make all neces-
24 sary decrees thereon. At the hearing aforesaid, such jus-
25 tice, upon motion of the petitioner, may order the produc-
26 tion and filing in court, for the inspection of the petitioner,
27 of all books and papers pertinent to the issue to be heard
28 by said appraisers, the terms and conditions of so producing
29 and filing such books and papers to be determined by said
30 justice in his order therefor and to be enforced from time
31 to time as any justice of said supreme judicial court in
32 term time or in vacation, upon motion of either party, may
33 deem reasonable and proper in the premises. At such
34 hearing, such justice, upon motion of the petitioner, may
35 fix a time at which the said defendant company shall file
36 in the clerk's office of the supreme judicial court of the
37 county of Oxford, for the inspection of the petitioner, the
38 following: First, schedules showing the names, residence,
39 street number if any and water service of each customer
40 on September fifteenth in the year of our Lord one thou-
41 sand nine hundred and twenty-one, with rate charged there-
42 for; second, copies of all contracts in force on said Septem-
43 ber fifteenth; third, an itemized statement of the gross
44 income earned during its last complete fiscal year and all
45 operating expenses and fixed charges paid or incurred dur-
46 ing such year and properly chargeable thereto; fourth, a
47 memorandum of all real estate, or interest therein, owned

48 or controlled on said September fifteenth, with such brief
49 description thereof as will reasonably identify the same;
50 fifth, a memorandum of all water rights used or owned on
51 said September fifteenth with a brief description thereof
52 and a concise statement of the method of acquiring the
53 same; sixth, duplicate plans of all structures owned in
54 whole or in part on said September fifteenth, with speci-
55 fications thereof; seventh, descriptions and specifications of
56 all reservoirs and stand pipes owned on said September
57 fifteenth; eighth, a description of all pipes, service pipes,
58 hydrants, gates, gate boxes, shut-off boxes, fixtures and
59 machinery, and all physical elements in such water system,
60 giving in detail all quantities, sizes, lengths, specifying the
61 streets, roads or ways where situated; ninth, an itemized
62 list of all tools, apparatus and appliances used or usable
63 in supplying water on said September fifteenth. Such or-
64 ders may be enforced from time to time by any justice of
65 said supreme judicial court in term time or in vacation,
66 upon motion of either party, as such justice may deem rea-
67 sonable and proper in the premises. At such hearing the
68 justice then sitting, may, upon motion of the petitioner,
69 make all such decrees as he deems reasonable and proper
70 to enable the petitioner, through its servants and employees,
71 to ascertain the conditions of the mains and pipes of the
72 defendant company, externally and internally, all work con-
73 nected therewith to be in the presence of the agents of the
74 aforesaid company, but wholly at the expense of said wa-

75 ter district, said decree to fix the number of such exam-
76 inations and to impose such conditions as may to the court
77 seem just and proper in the premises. The said appraisers
78 shall have the power of compelling attendance of witnesses
79 and the production of books and papers pertinent to the
80 issue and may administer oaths; and any witness or person
81 in charge of such books or papers refusing to attend or
82 to produce the same shall be subject to the same penalties
83 and proceedings, so far as applicable, as witnesses sum-
84 moned to attend the supreme judicial court. Depositions
85 may be taken as in civil actions. The said appraisers may
86 appoint a sufficient number of stenographers to enable a
87 full report of the proceedings of each day to be in readi-
88 ness for use the following day, each of said appraisers
89 is to have one copy thereof, and the parties to receive such
90 numbers of copies as the appraisers may deem necessary.
91 The compensation and expenses of said stenographers shall
92 be taxed and allowed by the appraisers and be paid and
93 borne as hereinafter provided. Their reports, certified by
94 said appraisers as correct, shall be filed with the award
95 to be made by said appraisers and shall be legal evidence
96 of all proceedings so reported. They shall make a full
97 report as required in trials had in the supreme judicial
98 court. The appraisers so appointed shall, after due notice
99 and hearing, fix the valuation of the plant, property and
100 franchises of the defendant company at what they are
101 fairly and equitably worth, so that said defendant com-
102 pany shall receive just compensation for all the same.

103 The first day of November, nineteen hundred and twenty-
104 one, shall be the date as of which the valuation aforesaid
105 shall be fixed, from which date interest on said award
106 at the rate of six per cent per annum shall run and all
107 net rents and profits accruing thereafter shall belong to
108 said water district. The report of said appraisers or of
109 a majority of them shall be filed in said clerk's office with-
110 in six months after their appointment, but, if at the ex-
111 piration of said six months the hearing before said ap-
112 praisers should then be in progress and unfinished, their
113 report may be so filed within thirty days after close of
114 said hearing. After said report is filed, such single jus-
115 tice, so appointing said appraisers, or in case of his in-
116 ability to act, then any justice designated for the purpose
117 by the chief justice, may, after notice and hearing, con-
118 firm or reject the same or recommit, if justice so requires,
119 and in case of such rejection or recommittal such justice
120 may fix the times for new hearings and new report there-
121 on. The award of the appraisers shall be conclusive as
122 to valuations. Upon confirmation of their report, the
123 court so sitting, in term time or in vacation, shall there-
124 upon, after hearing, make final decree upon the whole
125 matter, including the transfer of the properties and fran-
126 chises, jurisdiction over which is hereby conferred with
127 the same power to enforce said decree as in equity cases.
128 All the costs and expenses arising under such petition and
129 appraisal shall be paid and borne as directed by the court
130 in said final decree. The findings of such justice as to

131 such costs and expenses and their apportionment shall be
132 final. In all other matters the justice so making such
133 final decree, shall, upon request of any of the parties,
134 make separate findings of law and fact. All such find-
135 ings of fact shall be final, but any party aggrieved may
136 take exceptions to any rulings of law so made, the same
137 to be accompanied by only such parts of the case as are
138 necessary to a clear understanding of the questions raised
139 thereby. Such exceptions shall be claimed on the docket
140 within ten days after such final decree is signed, entered
141 and filed, and notice thereof has been given by the clerk
142 to the parties or their counsel, and said exceptions so
143 claimed shall be made up, allowed and filed within said
144 time unless further time is granted by the court or by
145 agreement of the parties. They shall be entered at the
146 next term of the law court to be held after the filing of
147 such exceptions and there heard unless otherwise agreed,
148 or the law court shall for good cause order a further time
149 for hearing thereon. Upon such hearing the law court
150 may confirm, reverse or modify the decree of the court
151 below or remand the cause for further proceedings, as
152 seems proper. During the pendency of such exceptions
153 the cause shall remain on the docket of the court below,
154 marked "law," and decree shall be entered thereon by a
155 single justice, in term time or in vacation, in accordance
156 with the certificate and opinion of the law court. Before
157 the aforesaid plant, property and franchises are trans-
158 ferred in accordance with such final decree, and before

159 the payment therefor, the court sitting in said county of
160 Oxford, by a single justice thereof, as hereinbefore pro-
161 vided, shall, upon motion of any party, after notice and
162 hearing, take account of all receipts and expenditures
163 properly had and incurred by said light and water com-
164 pany belonging to the period from and after November
165 first, nineteen hundred and twenty-one, and all net rents
166 and profits accruing thereafter, and shall order the net
167 balance due to any party to be added to or deducted from
168 the amount to be paid under such final decree, as the case
169 may be. All findings of law or fact by such single jus-
170 tice at such hearings shall be final. The amount to be
171 paid for the plant of the said light and water company
172 shall be paid to the trustee of the mortgage of said com-
173 pany and by such trustee distributed pro rata upon the
174 outstanding bonds secured by such mortgage, until the
175 principal of said bonds with all earned interest thereon
176 shall have been paid in full and any balance of said
177 amount shall be paid by said trustee to the said light and
178 water company. On payment of tender by said water
179 district of the amount so fixed and the performance of
180 all other terms and conditions so imposed by the court,
181 the entire plants, property and franchises of said defend-
182 ant company as described in section nine shall become
183 vested in said water district and be free from all liens,
184 mortgages and incumbrances theretofore created by the
185 said Dixfield Light & Water Company. After the filing
186 of said petition it shall not be discontinued or withdrawn

187 by said water district, and the said light and water com-
188 pany may thereafterwards cause said valuation to be made
189 as herein provided, and shall be entitled to appropriate
190 process to compel said water district to perform the terms
191 of the final decree and to pay for said plants, property
192 and franchises in accordance therewith. If any vacancy
193 occurs at any time in said board of appraisers, from any
194 cause, any justice of the supreme judicial court, sitting
195 in said county of Oxford, may, in term time or in vaca-
196 tion, after notice and hearing, appoint a new appraiser or
197 appraisers, and make all such orders for hearing said
198 cause by the appraisers anew or for any extension of time
199 for making their award, or otherwise, as the circumstances
200 of the case may require.

Sect. 11. All valid contracts, made in good faith, now
2 existing between said defendant company and any person,
3 firm or corporation for supplying water within the towns
4 named in section one, shall be assumed and carried out by
5 said Dixfield Water District.

Sect. 12. 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-bear-
4 ing negotiable notes of the district, and for the purpose
5 of paying or refunding the indebtedness so created, of pay-
6 ing any necessary expenses incurred in the creation of the
7 district, in acquiring the property and franchises of the
8 Dixfield Light & Water Company, by purchase or other-

9 wise, or in the purchase or acquisition of the property and
10 franchises of said defendant company, of securing sources
11 of supply, taking water and lands, paying damages, lay-
12 ing pipes, constructing, maintaining and operating a water
13 plant, and making renewals, extensions, additions and im-
14 provements to the same, the said water district, through
15 its trustees, may from time to time issue bonds of the dis-
16 trict to an amount or amounts necessary in the judgment
17 of the trustees therefor. Said notes and bonds shall be
18 legal obligations of the water district, which is hereby de-
19 clared to be a quasi municipal corporation within the mean-
20 ing of section one hundred five, chapter fifty-one of the
21 revised statutes, and all provisions of said section shall be
22 applicable thereto. The said notes and bonds shall be legal
23 investments for savings banks.

Sect. 13. The property of said district shall be exempt
2 from all taxation in the town or towns where said water
3 district is located.

Sect. 14. All individuals, firms and corporations, whether
2 private, public or municipal, shall pay to the treasurer of
3 said district the rates 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
6 shall be so established as to provide revenue for the fol-
7 lowing purposes:

1. To pay the current expenses for operating and main-
2 taining the water system.

II. To provide for the payment of the interest on the
2 indebtedness created by the district.

III. To provide each year a sum equal to not less than
2 one-half of one per cent nor more than five per cent of
3 the entire indebtedness created by the district, which sum
4 shall be turned into a sinking fund and there kept to pro-
5 vide for the extinguishment of said indebtedness. The
6 money set aside for the sinking fund shall be devoted to
7 the retirement of the obligations of the district or invested
8 in such securities as savings banks are allowed to hold.

Sect. 15. All incidental powers, rights and privileges nec-
2 essary to the accomplishment of the main object herein
3 set forth are granted to the public municipal corporation
4 hereby created.

Sect. 16. This act shall take effect when approved by a
2 majority vote of the legal voters of that portion of said wa-
3 ter district comprised by the Dixfield Village Corporation,
4 at a special meeting in the Dixfield Village section of said
5 water district, to be held on the third Monday of August,
6 in the year of our Lord one thousand nine hundred and
7 twenty-one. Said special meeting shall be called by the as-
8 sessors of the Dixfield Village Corporation, and shall be
9 called, warned and conducted according to the law relat-
10 ing to municipal elections, provided however, that the as-
11 sessors of said Dixfield Village Corporation shall not be
12 required to prepare for posting new lists of voters included
13 with said water district and described in section one. For
14 the purpose of registration of voters, said board of assess-

15 ors of the Dixfield Village Corporation shall be in session
16 at its office the secular day next preceding said special
17 election. The clerk of the Dixfield Village Corporation
18 shall reduce the subject matter of this act to the following
19 question: "Shall the Act to incorporate the Dixfield Wa-
20 ter District be accepted?" and the voters shall indicate by
21 a cross placed over the words "yes" or "no" their opinion
22 of the same. The result of the balloting in each case shall
23 be declared by the assessors of said Dixfield Village Cor-
24 poration and certificate thereof shall be filed by the clerk
25 of said Dixfield Village Corporation with the secretary of
26 state.

Sect. 17. If the Dixfield Village Corporation section of
2 said water district shall approve said act to incorporate
3 said water district by a majority of the legal voters at said
4 special election, then the territory within said Dixfield Vil-
5 lage Corporation and the people within the same shall con-
6 stitute the water district hereby created, and shall be em-
7 powered with all the rights, privileges and franchises con-
8 ferred by this act, and shall be authorized to proceed in
9 all acts, matters and things necessary to carry out the pur-
10 poses of this act. As early as may be after said special
11 election, if said act has been approved by the Dixfield Vil-
12 lage Corporation, the municipal officers of the town of Dix-
13 field shall as soon as may be thereafter meet and choose
14 three members, who shall constitute the board of trustees
15 for said water district.

Sect. 18. Sections two, three, four, five, six and seven

2 shall be inoperative, null and void unless said water dis-
3 trict shall first acquire by purchase or by the exercise of
4 the right of eminent domain as in this act provided, the
5 plant, property and franchises, rights and privileges of the
6 Dixfield Light & Water Company.

Sect. 19. This act shall take effect in ninety days after
2 the final adjournment of the legislature, so far as necessary
3 to empower the calling and holding of the election author-
4 ized in section sixteen herein provided for.