

MAINE STATE LEGISLATURE

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EIGHTY-FIRST LEGISLATURE

SENATE

NO. 258

In Senate, March 20, 1923.

Reported by Mr. Carlton from Committee on Public Utilities
and laid on table to be printed under joint rules.

L. ERNEST THORNTON, Secretary.

Presented by Senator Wadsworth of Kennebec.

STATE OF MAINE

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

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
7 brooks, springs, wells or streams in said Winthrop for the
8 purpose of supplying the inhabitants of Winthrop village
9 and other portions of said town or any other municipality
10 or water district with pure water for domestic, sanitary,
11 commercial 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
4 to maintain, repair, and replace all such pipes, aqueducts,
5 conduits and fixtures as may be necessary and convenient
6 for the purposes herein designated, and whenever said
7 town shall lay any pipes, conduits or aqueducts in any
8 street, roadway or highway it shall cause the same to be
9 done with as little obstruction as practicable to the public
10 travel, and shall at its own expense, without unreasonable
11 delay, cause the earth and pavement removed by it to be
12 replaced in proper condition.

Sect. 4. Said town is hereby authorized to erect and
2 maintain all dams, reservoirs and structures necessary and
3 convenient 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 registry
7 of deeds in said county, plans of the location of all lands
8 or interest therein or water rights, to be taken, with an
9 appropriate description and the names of the owners there-
10 of, if known. When for any reason said town fails to
11 acquire the property authorized to be taken, and which is
12 described in such location, or the location recorded is de-
13 fective or uncertain, it may, at any time, correct and perfect
14 such location and file a new description thereof, and in such
15 case the town is liable in damages only for property for
16 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
19 justified if the original taking had been lawful. No entry
20 shall be made on any private lands, except to make surveys,
21 until ten days shall have elapsed after the date of such
22 filing whereon possession may be had of all said lands or
23 interests therein or water rights so taken, but title thereto
24 shall 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
4 county commissioners of the county where said lands or

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

Sect. 7. In case of any crossing of a railroad, unless
2 consent is given by the company owning or operating such
3 railroad as to place, manner and conditions of the cross-
4 ing, within thirty days after such consent is requested by
5 said town, the public utilities commission shall determine
6 the place, manner and condition of such crossing; and all
7 work within the limits of such railroad location shall be
8 done under the supervision and to the reasonable satis-
9 faction of such railroad company, but at the expense of
10 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
16 years and one for three years, and whenever the term of
17 office of a trustee 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
20 vacancy arises it shall be filled in like manner for the
21 unexpired term. All such commissioners shall be eligible to
22 reappointment, but no selectman of said town of Winthrop
23 shall be at any time eligible to such office; said commis-
24 sioners may also ordain and establish such by-laws and
25 rules as are necessary for their own convenience and the
26 proper management of the affairs under their charge. The
27 term of office of said commissioners first appointed shall
28 be considered to date from the first Monday of April in
29 the year nineteen hundred and twenty-three; said water
30 commissioners may procure an office and incur such ex-
31 penses as may be necessary. Each member shall receive in
32 full compensation for his services an allowance of one
33 hundred dollars per annum, or such other less sum as the
34 said town at any legal town meeting, acting under an
35 article in the warrant therefor relating to such compensa-
36 tion, may prescribe. At the close of each fiscal year said

37 water commissioners shall make a detailed report of their
38 doings, of the receipts and expenditures coming under their
39 control and of such other matters pertaining to their duties
40 as shall show said town how said commissioners are ful-
41 filling the obligations of their trust, such reports to be made
42 and filed with the municipal 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, of the Winthrop Water Company and
7 of the Towle Packing Company, except their cash assets,
8 and also the entire plant, franchises, rights and privileges
9 of L. T. Carleton so far as the same pertain to his water
10 system and plant in said Winthrop, including all lands,
11 waters, water rights, dams, structures, reservoirs, pipes,
12 machinery, fixtures, hydrants, tools and all apparatus and
13 appliances owned by said water companies and by said
14 Carleton and used or usable in supplying water in the
15 town of Winthrop, together with all real estate so used
16 or usable. Said water companies are hereby authorized to
17 sell and transfer their respective franchises and properties
18 to said town. Said town is authorized to construct, install,
19 operate and maintain, in connection with its said water
20 system, a sewerage system and plant with all the appurte-
21 nances thereto throughout the entire village of said town

22 and the discharge from the pipes and conduits thereof may
23 be into the waters below the mill stream, so-called, pro-
24 vided, however, that it shall not construct any system of
25 drainage, or sewerage, without first having submitted its
26 plans to the public utilities commission and obtained their
27 approval therefor in writing, under the power invested in
28 said commission by chapter ninety-eight of the public laws
29 of nineteen hundred and seventeen.

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, Winthrop Water Company and
4 the Towle Packing Company and with said Carleton, any
5 or all of them, upon terms of purchase, on or before June
6 fifteenth, nineteen hundred and twenty-four, then said
7 town, through said water commissioners, is hereby author-
8 ized to take the plants, properties and franchises of the
9 aforesaid companies and of the said Carleton as authorized
10 in section nine as for public uses, by petition therefor in
11 the manner provided hereinafter wherein such companies
12 and the said Carleton shall be parties defendant, and, for
13 the purposes of designation hereinafter, are referred to as
14 and by the term "parties defendant." And said town,
15 through its water commissioners, is authorized on or before
16 November fifteenth, nineteen hundred and twenty-four, to
17 file a petition in the clerk's office of the supreme judicial
18 court for the county of Kennebec, in term time or in vaca-
19 tion, addressed to any justice thereof, who, after notice to

20 said parties defendant and their mortgagees, if any there
21 may be, shall, after hearing and within thirty days after
22 the filing of said petition appoint three disinterested ap-
23 praisers, none of whom shall be residents of the county
24 of Kennebec, one at least of whom shall be learned in the
25 law, for the purpose of fixing the valuation of the plants,
26 franchises, and properties of said parties defendant, as
27 described in section nine. Said petition shall not be dis-
28 missed after filing but may be and shall be amended in any
29 manner to enable the court to make all necessary decrees
30 thereon. At the hearing aforesaid, such justice, upon mo-
31 tion of the petitioner, may order the production and filing
32 in court, for the inspection of the petitioner, of all books
33 and papers pertinent to the issue to be heard by said ap-
34 praisers, the terms and conditions of so producing and
35 filing such books and papers to be determined by said
36 justice in his order therefor and to be enforced from time
37 to time as any justice of said supreme judicial court, in
38 term time or in vacation, upon motion of any party to said
39 cause, may deem reasonable and proper in the premises. At
40 such hearing, such justice, upon motion of the petitioner,
41 may fix a time at which the said parties defendant shall
42 file in the clerk's office of the supreme judicial court for
43 the county of Kennebec, for the inspection of the petitioner,
44 the following: First, schedules showing the names, resi-
45 dence and water service of each customer on September
46 fifteenth, nineteen hundred and twenty-three, with the rate

47 charged therefor; second, copies of all contracts in force on
48 said September fifteenth; third, an itemized statement of
49 the gross income earned during its last fiscal year and all
50 operating expenses and fixed charges paid or incurred
51 during such year and properly chargeable thereto; fourth,
52 a memorandum of all real estate, or interest therein, owned
53 or controlled on said September fifteenth, with such brief
54 description thereof, as will reasonably identify the same;
55 fifth, a memorandum of all water rights used or owned on
56 said September fifteenth with a brief description thereof
57 and a concise statement of the method of acquiring the
58 same; sixth, a description of all buildings and structures
59 owned in whole or in part on said September fifteenth
60 which are a part of the plants of the parties defendant;
61 seventh, descriptions of all reservoirs owned on said
62 September fifteenth; eighth, a description of all pipes, serv-
63 ice 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
76 and employees, to ascertain the condition of the mains and
77 pipes of the said defendants named in section nine, ex-
78 ternally and internally, all work connected therewith to be
79 in the presence of the agents of the parties defendant, but
80 wholly at the expense of said town of Winthrop, said
81 decree to fix the number of such examinations and to
82 impose such conditions as may to the court seem just and
83 proper in the premises. The said appraisers shall have the
84 power of compelling attendance of witnesses and the pro-
85 duction of books and papers pertinent to the issue and may
86 administer oaths; and any witness or person in charge of
87 such books or papers refusing to attend or to produce the
88 same shall be subject to the same penalties and proceedings,
89 so far as applicable, as witnesses summoned to attend the
90 supreme judicial court. Depositions may be taken as in
91 civil actions. The said appraisers may appoint a sufficient
92 number of stenographers to enable a full report of the
93 proceedings of each day to be in readiness for use the
94 following day, each of said appraisers to so have one copy
95 thereof, and the parties to receive such number of copies
96 as the appraisers may deem necessary. The compensation
97 and expenses of said stenographers shall be taxed and
98 allowed by the appraisers and be paid and borne as herein-
99 after provided. Their reports, certified by said appraisers
100 as correct, shall be filed with the award to be made by said

101 appraisers and shall be legal evidence of all proceedings
102 so reported. They shall make full report as required in
103 trials had in the supreme judicial court. The appraisers
104 so appointed shall, after due notice and hearing, fix the
105 valuation of the plants, properties and franchises of said
106 parties defendant at what they are fairly and equitably
107 worth so that said parties defendant shall receive just
108 compensation for the same. The fifteenth day of Novem-
109 ber, nineteen hundred and twenty-three shall be the date as
110 of which the valuation aforesaid shall be fixed, from which
111 date interest on said award at the rate of six per centum
112 per annum shall run and all net profits and rents accruing
113 thereafter shall belong to said town of Winthrop. The
114 report of said appraisers or of a majority of them shall be
115 filed in said clerk's office within six months after their
116 appointment, but, if at the expiration of said six months
117 the hearing before said appraisers should then be in
118 progress and unfinished, their report may be so filed with-
119 in thirty days after the close of said hearing. After said
120 report is filed, such single justice, so appointing said ap-
121 praisers, or in case of his inability to act, then any justice
122 designated for the purpose by the chief justice, may, after
123 notice and hearing, confirm or reject the same or recommit,
124 if justice so requires, and in case of such rejection or
125 recommittal such justice may fix the times for new hear-
126 ings and new report thereon. The award of the appraisers
127 shall be conclusive as to valuations. Upon confirmation

128 of their report, the court so sitting, in term time or in
129 vacation, shall thereupon, after hearing, make final decree
130 upon the whole matter, including the transfer of the prop-
131 erties and franchises, jurisdiction of which is hereby con-
132 ferred with the same power to enforce said decree as in
133 equity cases. All the cost and expenses arising under
134 said petition and appraisal shall be paid and borne as
135 directed by the court in said final decree. The findings
136 of such justice as to such costs and expenses and their
137 apportionment shall be final. In all other matters the
138 justice so making such final decree, shall upon request
139 of any of the parties, make separate findings of law and
140 fact. All such findings of fact shall be final, but any
141 party aggrieved may take exceptions to any rulings of
142 law so made, the same to be accompanied by only such
143 parts of the case as are necessary to a clear understanding
144 of the questions raised thereby. Such exceptions shall be
145 claimed on the docket within ten days after such final de-
146 cree is signed, entered and filed, and notice thereof has
147 been given by the clerk to the parties or their counsel, and
148 said exceptions so claimed shall be made up, allowed and
149 filed within said time unless further time is granted by the
150 court or by agreement of the parties. They shall be entered
151 at the next term of the law court to be held after the filing
152 of such exceptions and there heard unless otherwise
153 agreed, or the law court for good cause order a further
154 time for hearing thereon. Upon such hearing the law

155 court may confirm, reverse or modify the decree of the
156 court below or remand the cause for further proceedings,
157 as it seems proper. During the pendency of such excep-
158 tions the cause shall remain on the docket of the court
159 below, marked "law" and decree shall be entered thereon
160 by a single justice, in term time or in vacation, in accord-
161 ance with the certificate and opinion of the law court. Be-
162 fore the aforesaid plants, properties and franchises are
163 transferred in accordance with such final decree, and be-
164 fore the payment therefor, the court sitting in said county
165 of Kennebec, by a single justice thereof, as hereinbefore
166 provided, shall, upon motion of any party, after notice
167 and hearing, take account of all receipts and expenditures
168 properly had and incurred by said water companies and by
169 said Carleton belonging to the period from and after No-
170 vember fifteenth, nineteen hundred and twenty-three, and
171 all net rents and profits accruing thereafter, and shall order
172 the net balance due to any party to be added to or deducted
173 from the amount to be paid under the final decree, as the
174 case may be. All findings of law or fact by such single
175 justice at such hearings shall be final. The amount to be
176 paid for the plant of each of the said parties defendant
177 shall be paid to the trustee of the mortgage of each respec-
178 tive company, if any there may be. On payment or tender
179 by its certified check drawn upon a reliable trust company
180 or national bank by said town of Winthrop of the amount
181 so fixed and the performance of all other terms and con-

182 ditions so imposed by the court, the entire plants, proper-
183 ties and franchises of said parties defendant as described
184 in section one shall become vested in said town of Win-
185 throp. After the filing of said petition, it shall not be dis-
186 continued or withdrawn by said town and the said parties
187 defendant, to wit: said Hillside Water Company, the
188 Winthrop Water Company and the Towle Packing Com-
189 pany, and said Carleton may thereafterwards cause said
190 valuation to be made as herein provided, and shall be en-
191 titled to appropriate process to compel said town to
192 perform the terms of the final decree and pay for said
193 plants, properties and franchises in accordance therewith.
194 If a vacancy occurs at any time in said board of appraisers,
195 from any cause, any justice of the supreme judicial court,
196 sitting in said county of Kennebec, may, in term time or in
197 vacation, after notice and hearing, appoint a new appraiser
198 or appraisers and make all such orders for hearing said
199 cause by the appraisers anew or for any extension of time
200 for making their award, or otherwise, as the circumstances
201 of the case may require.

Sect. 11. All valid contracts, made in good faith, exist-
2 ing on the fifth day of February, nineteen hundred and
3 twenty-three, between said parties defendant and any per-
4 son or corporation for supplying water within the said town
5 of Winthrop shall be assumed and carried out by said town
6 of Winthrop.

Section 12. For accomplishing the purposes of this act,

2 said town, through its said water commissioners, is author-
3 ized to borrow money temporarily and to issue therefor the
4 interest-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 of
7 liabilities, incurred under the provisions of this act, includ-
8 ing the expenses incurred in the acquiring of the plants of
9 said parties defendant, by purchase or otherwise, or in the
10 purchase or acquisition of the properties and franchises of
11 said parties defendant, of securing sources of supply, taking
12 waters and lands, paying damages, laying pipes, construct-
13 ing, maintaining and operating a water plant and making
14 renewals, extensions, additions and improvements to the
15 same and other expenses properly incurred in carrying out
16 the provisions of this act, the said town, through its water
17 commissioners, may from time to time issue bonds of the
18 town to an amount which, taken in connection with the other
19 indebtedness of the town of Winthrop, will not exceed the
20 amount limited by the constitution of Maine. And such
21 bonds shall be signed by said board of water commissioners
22 of Winthrop and the treasurer of said town, but the coupons
23 need be signed by said treasurer only, and shall be desig-
24 nated and marked "The Winthrop Water Loan." Said
25 notes and bonds shall be legal obligations of said towns and
26 shall be legal investments for savings banks.

Sect. 13. The property of said town shall be exempt

2 from all taxation in any towns or cities where any part of
3 its 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-
2 taining said system.

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

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

Sect. 15. All incidental powers, rights and privileges

2 necessary to the accomplishment of the main objects herein
3 set forth are granted to said town of Winthrop.

Sect. 16. This act shall take effect if and when prior
2 to the first day of April, nineteen hundred and twenty-four,
3 it shall be approved by a majority vote of the legal voters
4 of the town of Winthrop present and voting by ballot at an
5 election to be specially called by the selectmen of said Win-
6 throp upon petition therefor signed by at least twenty legal
7 voters of said town and held for that purpose. Such elec-
8 tion shall be called, warned and conducted according to the
9 law relating to municipal elections in said town, provided,
10 however, that the selectmen of said town shall not be re-
11 quired to prepare for posting or the town clerk to post a
12 new list of voters, and for the purpose of registration of
13 voters said selectmen shall be in session the secular day next
14 preceding such special election. The town clerk shall re-
15 duce the subject matter of this act to the following question:
16 "Shall the act to supply the town of Winthrop with pure
17 water be accepted?" and the voters shall indicate by a cross
18 over the words "Yes" or "No" their opinion of the same.
19 The result shall be declared by the selectmen and due cer-
20 tificate thereof filed by the town clerk with the secretary of
21 state.

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 or shall first
4 file in the office of the clerk of the supreme judicial court

5 the petition mentioned in section ten hereof for the exercise
6 of the right of eminent domain as in this act provided with
7 a bona fide intent to acquire the plants, properties and
8 franchises of said Hillside Water Company, of said Win-
9 throp Water Company, of the Towle Packing Company
10 and of said Carleton.

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.