

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 568

H. P. 1554 House of Representatives, March 1, 1929.

Referred to Committee on Legal Affairs and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Kitchen of Presque Isle.

STATE OF MAINE

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

AN ACT Authorizing Towns to Establish Water Districts
Within Their Territorial Limits.

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

Section 1. Any town, by an appropriate article in its warrant, at any annual meeting or at any special meeting at which there is an attendance of at least one hundred legal voters thereof, may vote to incorporate and establish within such territorial limits of such town, as it may then determine, a water district, for the purpose of supplying the inhabitants of such district and also any other portion of said town or any other municipality or water district with

9 pure water for domestic, sanitary, commercial and municipal
10 purposes.

The territory and the people within the same, as so deter-
2 mined by said town, shall constitute a body politic and cor-
3 porate under such appropriate name as may be designated,
4 provided, however, that the name or a part of the name of
5 said town together with the words "water district" shall be
6 used.

Sect. 2. The said district for effecting and carrying out
2 the purposes of its incorporation is authorized to retain,
3 collect, take, hold, store, divert, use and distribute water
4 from any springs, ponds, streams or other water sources
5 in said municipality or in other towns when so authorized
6 by the public utilities commission.

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

Sect. 4. The said district is hereby authorized to lay in
2 and through the streets, roads, ways, highways and bridges

3 in said town and across private lands therein, and to main-
4 tain, repair, and replace all such pipes, aqueducts and fix-
5 tures as may be necessary and convenient for its corporate
6 purposes, 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. Said water district is hereby authorized for the
2 purposes of its incorporation to erect and maintain all dams,
3 reservoirs, and structures necessary and convenient for its
4 corporate purposes.

Sect. 6. In exercising the right of eminent domain con-
2 ferred upon it by law from time to time, the said district
3 shall file in the office of the county commissioners of the
4 county and record in the registry of deeds in said county,
5 plans of the location of all lands or interests therein, or
6 water rights to be taken, with an appropriate description
7 and names of the owners thereof, if known. If for any rea-
8 son the district fails to acquire the property authorized to
9 be taken and which is described in such location, or the
10 location recorded is defective or uncertain, it may at any
11 time correct and perfect such taking and file a new descrip-
12 tion thereof, and in such case the district is liable in dam-
13 ages only for the property for which the owner had not
14 previously been paid, to be assessed as of the time of the

15 original taking; and the district shall not be liable for any
16 acts which would have been justified if the original taking
17 had been lawful. No entry shall be made on any private
18 lands except to make surveys until the expiration of ten
19 days from said filing, whereupon possession may be had
20 of all such lands or interests therein or water rights so taken,
21 but title thereto shall not vest in said district until payment
22 therefor.

Sect. 7. If any person sustaining damages by any taking
2 as aforesaid shall not agree with the district upon the sum
3 to be paid therefor, either party upon petition to the county
4 commissioners of the county may have such damages as-
5 sessed by them. The procedure and all subsequent proceed-
6 ings and right of appeal therefrom shall be had under the
7 same restrictions, conditions and limitations as are or may
8 be by law designated in the case of damages by the laying
9 out of highways.

Sect. 8. In case of any crossing of railroads, unless con-
2 sent is given by the company owning or operating such rail-
3 road, as to place, manner and conditions of the crossing,
4 within thirty days after such consent is requested by such
5 district, the public utilities commission shall, upon petition
6 setting forth a description of said premises and the reasons
7 for said crossing after notice given as said commission may
8 prescribe, determine the place, manner and conditions of
9 such crossing, and all work within the limits of such railroad
10 location shall be done under the supervision of the railroad

11 company and to the reasonable satisfaction of said com-
12 pany, but at the expense of said water district, unless other-
13 wise ordered by said public utilities commission.

Sect. 9. All the affairs of said water district shall be
2 managed by a board of trustees composed of three mem-
3 bers, all of whom shall be residents of said district. They
4 shall be appointed by the municipal officers of the town.
5 As soon as convenient after the members of said board
6 have been so chosen, said trustees shall hold a meeting and
7 organize by the election of a president and clerk, adopt a
8 corporate seal and when in their judgment necessary, may
9 choose a treasurer and all other needful officers and agents
10 for the proper conduct and management of the affairs of
11 said district. At said first meeting they shall determine
12 by lot the term of office of each trustee so that one shall
13 serve for one year, one for two years and one for three
14 years, and whenever the term of office of a trustee expires
15 his successor shall be appointed by the municipal officers of
16 said town to serve for the full term of three years, and
17 in case any other vacancy arises it shall be filled in like man-
18 ner for the unexpired term. All such trustees shall be
19 eligible to re-appointment, but no selectman of said town
20 shall at any time be eligible to such office; said trustees may
21 also ordain and establish such by-laws as are necessary for
22 their own convenience and the proper management of the
23 affairs of the district. The term of office of said trustees
24 first chosen shall be considered to date from the first day

25 of January in the year in which said district is established;
26 said trustees may procure an office and incur such expenses
27 as may be necessary. Each member shall receive in full
28 compensation for his services an allowance of one hundred
29 dollars per annum, or such other less sum as the said water
30 district at any legal meeting may prescribe. At the close
31 of each fiscal year the trustees shall make a detailed report
32 of their doings, of the receipts and expenditures of said
33 water district, of its financial and physical condition, and
34 of such other matters and things pertaining to said district
35 as shall show the inhabitants of said district how said trus-
36 tees are fulfilling the duties and obligations of their trust,
37 such reports to be made and filed with the municipal officers
38 of the town. Within sixty days after such organization
39 is effected, said trustees shall make a certificate setting forth
40 the name of the corporation, the town where located and
41 the names of the officers; which shall be recorded in the
42 registry of deeds in the county and within thirty days there-
43 after a copy thereof certified by the register of deeds of
44 said county shall be filed in the secretary of state's office.
45 who shall enter the date of filing thereon and on the original
46 certificate to be kept by the corporation and shall record
47 said copy in a book kept for that purpose. The register
48 of deeds shall receive for recording such certificate the fee
49 provided by section eighteen of chapter one hundred eighteen
50 and no other fee shall be payable.

Sect. 10. In case that there is any incorporated company
2 or companies which at the time of the vote approving the

3 incorporation of said district under section seventeen here-
4 of is legally furnishing water to the inhabitants within the
5 territorial limits of said district, said water district is hereby
6 authorized and empowered to acquire by purchase or by the
7 exercise of the right of eminent domain, which right is
8 hereby expressly delegated to said district for said purpose,
9 the entire plants, properties, franchises, rights and privileges
10 of such water company or companies except their cash as-
11 sets, including all lands, waters, water rights, dams, struc-
12 tures, reservoirs, pipes, machinery, fixtures, hydrants, tools
13 and all apparatus and appliances owned by said water com-
14 panies used or usable in supplying water in said district,
15 together with all real estate so used or usable. Said water
16 companies are hereby authorized to sell and transfer their
17 respective franchises and properties to said water district.

Sect. 11. In case the said trustee fails to agree with such
2 water company, any or all of them, upon terms of pur-
3 chase, agree within six months after the date of said vote
4 in section seventeen hereof, then said water district,
5 through its trustees, is hereby authorized to take the plants,
6 properties and franchises of said water company as author-
7 ized in section ten as for public uses, by petition therefor
8 in the manner as provided hereinafter wherein such water
9 company shall be the party defendant. And said water
10 district, through its trustees, is hereby authorized within
11 six months thereafter to file a petition in the clerk's office
12 of the supreme judicial court for the county, in term time
13 or in vacation, addressed to any justice thereof, who, after

14 notice to said defendant water company and its mortgagees,
15 if any there may be, shall, after hearing and within thirty
16 days after the filing of said petition appoint three disinter-
17 ested appraisers, none of whom shall be residents of the
18 county, one at least of whom shall be learned in the law,
19 for the purpose of fixing the valuation of the plants, fran-
20 chises and properties of said defendant water company as
21 described in section ten. Said petition shall not be dis-
22 missed after filing but may be and shall be amended in any
23 manner to enable the court to make all necessary decrees
24 thereon. At the hearing aforesaid, such justice, upon mo-
25 tion of the petitioner, may order the production and filing
26 in court, for the inspection of the petitioner, of all books
27 and papers pertinent to the issue to be heard by said ap-
28 praisers, the terms and conditions of so producing and filing
29 such books and papers to be determined by said justice in
30 his order therefor and to be enforced from time to time
31 as any justice of said supreme judicial court, in term time
32 or in vacation, upon motion of any party to said cause,
33 may 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 water company
36 shall file in the clerk's office of the supreme judicial court
37 for the county, for the inspection of the petitioner, the fol-
38 lowing: first, schedules showing the names, residence, and
39 water service of each customer on the date of said vote
40 with the rate charged therefor; second, copies of all con-
41 tracts in force on the date of said vote; third, an itemized

42 statement of the gross income earned during its last fiscal
43 year and all operating expenses and fixed charges paid or
44 incurred during such year and properly chargeable thereto;
45 fourth, a memorandum of all real estate, or interest therein,
46 owned or controlled on the date of said vote, with such
47 brief description thereof, as will reasonably identify the
48 same; fifth, a memorandum of all water rights used or
49 owned on the date of said vote with a brief description
50 thereof and a concise statement of the method of acquiring
51 the same; sixth, a description of all buildings and struc-
52 tures owned in whole or in part on the date of said vote
53 which are a part of the plants of said defendant; seventh,
54 descriptions of all reservoirs owned on the date of said
55 vote; eighth, a description of all pipes, service pipes, hy-
56 drants, gates, gate boxes, shut-off boxes, fixtures and
57 machinery, and all the physical elements in such water
58 system, giving in detail all quantities, sizes and lengths, and
59 specifying the streets, roads or ways where situated; ninth,
60 an itemized list of tools, appliances and apparatus used
61 or usable in supplying water on the date of said vote. Such
62 orders may be enforced from time to time by any justice
63 of said supreme judicial court in term time or in vacation,
64 upon motion of either party, as such justice may deem
65 reasonable and proper in the premises. At such hearing
66 the justice then sitting may, upon motion of the petitioner,
67 make all such decrees as he deems reasonable and proper
68 to enable the petitioner, through its servants and employees,
69 to ascertain the condition of the mains and pipes of said

70 defendant named in section ten, externally and internally,
71 all work connected therewith to be in the presence of the
72 agents of the said defendant, but wholly at the expense
73 of said water district, said decree to fix the number of
74 such examinations and to impose such conditions as may
75 to the court seem just and proper in the premises. The
76 said appraisers shall have the power of compelling attend-
77 ance of witnesses and the production of books and papers
78 pertinent to the issue and may administer oaths; and any
79 witness or person in charge of such books or papers refus-
80 ing to attend or to produce the same shall be subject to
81 the same penalties and proceedings, so far as applicable,
82 as witnesses summoned to attend the supreme judicial
83 court. Depositions may be taken as in civil actions. The
84 said appraisers may appoint a sufficient number of stenog-
85 raphers to enable a full report of the proceedings of each
86 day to be in readiness for use the following day, each of
87 said appraisers to so have one copy thereof, and the parties
88 to receive such number of copies as the appraisers may
89 deem necessary. The compensation and expenses of said
90 stenographers shall be taxed and allowed by the appraisers
91 and be paid and borne as hereinafter provided. Their re-
92 ports, certified by said appraisers as correct, shall be filed
93 with the award to be made by said appraisers and shall
94 be legal evidence of all proceedings so reported. They shall
95 make full report as required in trials had in the supreme
96 judicial court. The appraisers so appointed shall, after
97 due notice and hearing, fix the valuation of the plants,

98 properties and franchises of said defendant water company
99 at what they are fairly and equitably worth so that said
100 defendant water company shall receive just compensation
101 for the same. The date of said vote shall be the date as
102 of which the valuation aforesaid shall be fixed, from
103 which date interest on said award at the rate of six per
104 centum per annum shall run and all net rents and profits
105 accruing thereafter shall belong to said water district. The
106 report of said appraisers or of a majority of them shall
107 be filed in said clerk's office within six months after their
108 appointment, but, if at the expiration of said six months
109 the hearing before said appraisers should then be in
110 progress and unfinished, their report may be so filed within
111 thirty days after the close of said hearing. After said
112 report is filed, such single justice, so appointing said ap-
113 praisers, or in case of his inability to act, then any justice
114 designated for the purpose by the chief justice, may, after
115 notice and hearing, confirm or reject the same or recom-
116 mit, if justice so requires, and in case of such rejection
117 or recommittal, such justice may fix the times for new
118 hearings and new report thereon. The award of the ap-
119 praisers shall be conclusive as to valuations. Upon con-
120 firmation of their report, the court so sitting, in term
121 time or in vacation, shall thereupon, after hearing, make
122 final decree upon the whole matter, including the transfer
123 of the properties and franchises, jurisdiction over which
124 is hereby conferred with the same power to enforce said
125 decree as in equity cases. All the costs and expenses aris-

126 ing under said petition and appraisal shall be paid and
127 borne as directed by the court in said final decree. The
128 findings of such justice as to such costs and expenses and
129 their apportionment shall be final. In all other matters
130 the justice so making such final decree shall, upon re-
131 quest of any of the parties, make separate findings of law
132 and fact. All such findings of fact shall be final, but any
133 party aggrieved may take exceptions to any rulings of
134 law so made, the same to be accompanied by only such
135 parts of the case as are necessary to a clear understanding
136 of the questions raised thereby. Such exceptions shall
137 be claimed on the docket within ten days after such final
138 decree is signed, entered and filed, and notice thereof has
139 been given by the clerk to the party or his counsel, and
140 said exceptions so claimed shall be made up, allowed and
141 filed within said time unless further time is granted by
142 the court or by agreement of the party. They shall be
143 entered at the next term of the law court to be held after
144 the filing of such exceptions and there heard unless other-
145 wise agreed, or the law court shall for good cause order
146 a further time for hearing thereon. Upon such hearing
147 the law court may confirm, reverse or modify the decree
148 of the court below or remand the cause for further pro-
149 ceedings, as it seems proper. During the pendency of
150 such exceptions the cause shall remain on the docket of
151 the court below, marked "law," and decree shall be en-
152 tered thereon by a single justice, in term time or in vaca-
153 tion, in accordance with the certificate and opinion of the

154 law court. Before the aforesaid plants, properties, and
155 franchises are transferred in accordance with such final
156 decree, and before the payment therefor, the court sitting
157 in said county by a single justice thereof, as hereinbefore
158 provided, shall, upon motion of any party, after notice
159 and hearing, take account of all receipts and expenditures
160 properly had and incurred by said water company belong-
161 ing to the period from and after the date of said vote, and
162 all net rents and profits accruing thereafter, and shall or-
163 der the net balance due to any party to be added or de-
164 ducted from the amount to be paid under such justice and
165 such hearings shall be final. The amount to be paid for
166 the plant of said water company shall be paid to the trust-
167 ee of the mortgage of each respective company, if any
168 there be. On payment or tender by its certified check
169 drawn upon a reliable trust company or national bank by
170 said water district the amount so fixed and the perform-
171 ance of all other terms and conditions so imposed by the
172 court, the entire plants, properties and franchises of said
173 water company, as described in section ten shall become
174 vested in said water district. After the filing of said peti-
175 tion it shall not be discontinued or withdrawn by said
176 water district, and the said water company may thereafter-
177 wards cause said valuation to be made as herein provided,
178 and shall be entitled to appropriate process to compel said
179 water district to perform the terms of the final decree
180 and to pay for said plants, properties and franchises in
181 accordance therewith. If a vacancy occurs at any time in

182 said board of appraisers, from any cause, any justice of
183 the supreme judicial court, sitting in said county, may, in
184 term time or in vacation, after notice and hearing, appoint
185 a new appraiser or appraisers and make all such orders
186 for hearing said cause by the appraisers anew or for any
187 extension of time for making their award, or otherwise, as
188 the circumstances of the case may require.

Sect. 12. All valid contracts, made in good faith, exist-
2 ing at the time said town votes to establish said district
3 between said defendant water company or companies and
4 authorized by the charter of such companies, and any per-
5 son or corporation for supplying water within the limits
6 embraced by said district, shall be assumed and carried out
7 by the said district. The water district is hereby authorized
8 to make contracts with said town and with corporations
9 and inhabitants of said town, or any village corporation
10 therein for the purpose of supplying water as contemplated
11 by this act, and the town by its selectmen or any village
12 corporation therein by its proper officers is hereby author-
13 ized to enter into a contract with said district for a supply
14 of water for public uses on such terms and for such time
15 as the parties may agree, which contract when made shall
16 be legal and binding on all parties thereto if and when ap-
17 proved by the public utilities commission and said town or
18 any village corporation therein for said purposes may raise
19 money in the same manner as for other municipal charges.

Sect. 13. 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 of
5 paying or refunding the indebtedness so created, of paying
6 any necessary expenses or liabilities, incurred under the
7 provisions of this act, including the expenses incurred in
8 the creation of the district, in acquiring the plants, prop-
9 erties and franchises of said water companies, by purchase
10 or otherwise or in the purchase or acquisition of the prop-
11 erties and franchises of said defendant water companies
12 of securing sources of supply, taking water and lands, pay-
13 ing damages, laying pipes, constructing, maintaining and
14 operating a water plant, and making renewals, extensions,
15 additions and improvements to the same, the said water
16 district, through its trustees, may from time to time issue
17 bonds of the district to an amount or amounts necessary
18 in the judgment of the trustee aforesaid. Said notes and
19 bonds shall be legal obligations of the water district, which
20 is hereby declared to be a quasi-municipal corporation with-
21 in the meaning of section ninety-six, chapter forty-seven
22 of the revised statutes, and all the provisions of said sec-
23 tion shall be applicable thereto. The said notes and bonds
24 shall be legal investments for savings banks.

Sect. 14. The property of said district shall be exempt
2 from all taxation in said town and in any other towns
3 where any part of its plant may be located.

Sect. 15. 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 uni-
5 form within the territory supplied by the district. Said
6 rates shall be so established as to provide revenue for the
7 following purposes:

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

2. To provide for the payment of the interest on the in-
2 debtedness created by the district.

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

Sect. 17. This act shall take effect when approved by a
2 majority vote of the legal voters resident within said dis-
3 trict by ballot at an election to be specially called by the
4 selectmen of said town upon petition therefor signed by at
5 least twenty legal voters resident within said district and
6 held for that purpose within fifty days following the day
7 of the meeting of legal voters of the town mentioned in

8 section one hereof. Such election shall be called, warned
9 and conducted according to the law relating to municipal
10 elections in said town, provided, however, that the select-
11 men of said town shall not be required to prepare for post-
12 ing or the town clerk to post a new list of voters, and for
13 the purpose of registration of voters said selectmen shall
14 be in session the secular day next preceding such special
15 election. The town clerk shall reduce the subject matter
16 of this act to the following question, "Shall the act to in-
17 corporate the (name or part of name of town in which is
18 the district) Water District be accepted?" and the voters
19 shall indicate by a cross placed upon their ballots over the
20 words "yes" or "no" their opinion of the same. The re-
21 sult shall be declared by the selectmen and due certificate
22 thereof filed by the town clerk with the secretary of state.

Sect. 18. In case there is such water company or com-
2 panies as specified in section ten hereof, then sections two,
3 three, four, five, six, seven and eight of this act shall be
4 inoperative, null and void, unless the said water district
5 shall acquire by purchase or shall first file in the office of
6 the clerk of the supreme judicial court for said county the
7 petition mentioned in section eleven hereof for the exercise
8 of the right of eminent domain, as in this act provided,
9 with a bona fide intent to acquire the plants, properties
10 and franchises of said company or companies.

Sect. 19. All the rights and duties herein mentioned shall
2 be exercised and performed in accordance with all the ap-

3 plicable provisions of chapter fifty-five of the revised
4 statutes and all acts amendatory thereof or additional there-
5 to.

Sect. 20. As used in this act, except when the contents
2 otherwise implies, the word "town" shall mean the munici-
3 pality within whose territorial limits such water district is
4 located; the terms "water district" and "district" severally,
5 shall mean the corporation established by virtue of this act;
6 the word "county" shall mean the county within whose ter-
7 ritorial limits such water district is located; "water com-
8 pany" shall mean an incorporated company authorized to
9 furnish water to the inhabitants within any part of the ter-
10 ritorial limits of said water district; the word "company"
11 shall mean one or more incorporated companies furnishing
12 water in accordance with its or their charters within the
13 territorial limits of said district upon the date of said vote;
14 "date of said vote" shall mean the vote provided by section
15 seventeen hereof approving the organization of such water
16 district by the legal voters thereof.