

# MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H   L E G I S L A T U R E

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Legislative Document

No. 998

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H. P. 1837

House of Representatives, March 2, 1939.

Referred to the Committee on Public Utilities. Sent up for concurrence and 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Varney of Berwick by request.

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S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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**AN ACT to Incorporate South Berwick Water District.**

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

**Sec. 1. Territorial limits; corporate name; purposes.** The territory comprising the town of South Berwick with the people residing therein, shall constitute a body politic and corporate under the name of South Berwick Water District, for the purpose of supplying the inhabitants of said district and said municipality with water for domestic sanitary, industrial, and municipal purposes.

**Sec. 2. Source of water supply; right of eminent domain.** Said district is hereby authorized, for the purposes aforesaid, to take and hold sufficient water of any surface or underground sources, stream, springs or ponds in said district or any adjoining towns and may take and hold by purchase or otherwise any land or real estate necessary for erecting dams, reservoirs, standpipes for storing water or preserving the purity thereof or for protecting watershed and for laying and maintaining aqueducts for taking, discharging and disposing of water. The provisions of sections 23 to 26, inclusive, of chapter 69 of the revised statutes of 1930 shall apply to all land taken under this section.

**Sec. 3. Damages, how ascertained.** Said district shall be liable for all damages sustained by persons or corporations in their property by the tak-

ing of any land whatsoever or water or by flowage or by excavating through any land for the purpose of laying pipes, building dams or constructing reservoirs or standpipes. If any person sustaining damage as aforesaid and said corporate district shall not mutually agree upon the sum to be paid therefor, such person or corporation shall cause his or her or its damages to be ascertained in the same manner and under the same conditions, restrictions and limitations as are or may be prescribed in the case of damages by the laying out of highways.

**Sec. 4. May lay pipes, etc., along public ways and across private lands.** Said water district is hereby authorized to lay in and through the streets and highways of said town of South Berwick and any adjoining town or towns and across private lands in said town of South Berwick or any adjoining town or towns and to take up, repair and replace all such pipes, aqueducts and fixtures as may be necessary for the objects set forth, and whenever said district shall lay any pipes or aqueducts in any street or highway, it shall cause the same to be done with as little obstruction as possible to the public travel, and shall at its own expense, without unnecessary delay, cause the pavement and earth removed by it to be replaced in proper condition.

**Sec. 5. Management of affairs.** All the affairs of said water district shall be managed by a board of trustees, composed of 3 members chosen by the legal voters of said district. The first board of trustees shall be elected at the meeting of the voters of said town of South Berwick when this charter is accepted, which meeting may be a special meeting called for said purpose. As soon as convenient after said trustees have been chosen, they shall hold a meeting at the office of the selectmen in the town of South Berwick and organize by the election of a president and clerk, adopt a corporate seal, and when necessary may choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. At said first meeting they shall determine by lot the term of office of each trustee so that 1 shall serve for 1 year, 1 for 2 years and 1 for 3 years; and when the term of office of a trustee expires, the town at its annual town meeting shall elect by ballot a successor to serve the full term of 3 years; and in case any other vacancy arises it shall be filled in like manner for the unexpired term. They may also ordain and establish such by-laws, not inconsistent with the laws of the state, as are necessary for their own convenience and the proper management of the affairs of said district. The terms of office of said trustees shall begin on the first Monday of January, but this provision shall not prevent the first board of trustees from becoming such at once upon their election at the meeting in which

this charter is accepted. The trustees shall make and publish an annual report and include therein the report of the treasurer. Each trustee shall receive in full compensation for his services an allowance of \$200 per annum.

**Sec. 6. Acquisition of systems of South Berwick Water Company and South Berwick Water Company, Inc., authorized.** Said district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plants, properties, except accounts receivable, stocks, bonds, or other securities, franchises, rights and privileges now owned or held by said South Berwick Water Company and South Berwick Water Company, Inc., or their successors or assigns, including all lands, buildings, pipes, standpipes, reservoirs, machinery, fixtures, hydrants, automobiles, tools, apparatus and appliances owned by the said South Berwick Water Company and South Berwick Water Company, Inc., or their successors or assigns, and used or usable in supplying water, and any other real estate in said district or adjoining towns for the purposes herein set forth, whether their aggregate value exceeds or not the value limit named in the charter of said companies.

**Sec. 7. Procedure in case purchase price of systems of South Berwick Water Company and South Berwick Water Company, Inc. cannot be agreed upon.** In case said trustees fail to agree with the said South Berwick Water Company and South Berwick Water Company, Inc., their successors or assigns, or either of said companies upon the terms of the purchase of the above mentioned property or properties, within 3 months after the acceptance of this charter by the inhabitants of said water district as hereinafter set forth, said district, through its trustees aforesaid, is hereby authorized to take said plants, properties and franchises, as for public use by petition therefor in the manner hereinafter provided. And said water district, through its trustees, is hereby authorized at any time after 3 months from the date of the acceptance of this charter, as aforesaid, not later than January 1st, 1941, to file a petition in the clerk's office of the supreme judicial court for the county of York, in term time or during vacation, addressed to any justice of said court, who, after due notice to said South Berwick Water Company and said South Berwick Water Company, Inc., their successors or assigns, and their mortgagees, shall after hearing and within 30 days after the filing of said petition appoint 3 disinterested appraisers, none of whom shall be residents of the town of South Berwick, for the purpose of fixing the valuation of said plants, properties, and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the

production and filing in court, for the inspection of the petitioner, all of the books and papers appurtenant to the issue and necessary for the full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of the supreme judicial court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner, may fix a time at which the said water companies shall file in the clerk's office of the supreme judicial court for the county of York, for the inspection of the petitioner, the following: first, schedules showing the names, residences and water service of all customers on the day of the acceptance of the charter, with the rate charged therefor; second, copies of all contracts in force on said day of the acceptance of the charter; third, an itemized statement of the gross income earned during its last complete fiscal year and up to said day of the acceptance of the charter and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; fourth, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said day of the acceptance of the charter, with such brief description thereof as would reasonably identify the same; fifth, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate-boxes, shut-off boxes, fixtures and machinery and all the physical elements in such water systems, giving in detail quantities, sizes, and lengths, and specifying the streets, roads, or ways where situated; sixth, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said day of the acceptance of the charter. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the mains and pipes of the said water companies, externally or internally, in the presence of the officers or agents of said water companies, the entire expense thereof to be borne by said water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as wit-

nesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plants, properties and franchises at what they are fairly and equitably worth, so that said water companies, their successors or assigns, shall receive just compensation for all the same. The day of the acceptance of the charter shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or a majority of them, shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same, or recommit it if justice so requires. Upon the confirmation of said report the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decrees as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court, or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plants, properties and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures properly had or incurred by the South Berwick Water Company and South Berwick Water Company, Inc., their successors or assigns, belonging to this period, from and after said day of the acceptance of the charter, and all net rents and profits accruing thereafter, and shall order the net balance to be added to, or deducted from, the amount to be paid under such final decree, as the case may be. All findings of law and fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performance of all the other terms and conditions so imposed by said court, the entire plants, properties and franchises shall be-

come vested in said water district. All of said plants, properties and franchises shall be taken and shall vest in said district, subject to all bonds, mortgages, liens and incumbrances thereon, all which bonds, mortgages, liens and incumbrances shall be assumed and paid by said district. The compensation to be paid to said South Berwick Water Company and South Berwick Water Company, Inc., their successors or assigns, for said plants, properties and franchises shall be the difference between the valuation thereof as fixed and determined by said appraisers and the aggregate amount of such bonds, mortgages, liens and incumbrances which are assumed by said district.

**Sec. 8. Valid contracts of South Berwick Water Company and South Berwick Water Company, Inc., their successors or assigns, to be assumed.** All valid contracts now existing between the said companies and any person or corporations for supplying water shall be assumed and carried out by said South Berwick Water District.

**Sec. 9. Bond issue authorized.** For accomplishing the purposes of this act said water district is hereby authorized and empowered through its trustees, to issue its bonds to an amount sufficient to procure funds to pay the expenses incurred in the acquisition of said plants, properties and franchises of said companies aforesaid, for further extensions, additions and improvements of said plant and to refund any bonds or other indebtedness assumed by said district under this act. Said bonds shall be a legal obligation of said water district, which is hereby declared to be a quasi-municipal corporation within the meaning of sections 116 and 117 of chapter 56 of the revised statutes of 1930 and all the provisions of said section and acts amendatory thereof shall be applicable thereto. The bonds shall be a legal investment for savings banks. The trustees may also borrow on the notes of the district such sums as may be necessary to meet the current expenses of the district in anticipation of the collection of water rates.

**Sec. 10. Water rates; sinking fund.** All individuals, firms and corporations, whether public, private or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates for like services shall be uniform within the district. Said water rates shall be so established as to provide revenue for the following purposes:

I. To pay the current running expenses for maintaining the water systems and provide for such extensions and renewals as may become necessary, except where such extensions shall have been provided for by an issue of bonds authorized by section 41, chapter 62 of the revised statutes, 1930, as amended.

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

III. To provide each year a sum equal to not less than 1 or more than 4% of the entire indebtedness of the district, which sum shall be turned into a sinking fund to provide for the final extinguishment of the funded debt. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district, or invested in such securities as savings banks are allowed to hold. Provided, however, that the trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1 per centum of the amount of the bonds so issued shall mature and be retired each year.

**Sec. 11. Exempt from taxation.** The property belonging to and situated within said district shall be exempt from taxation.

**Sec. 12. Incidental powers and privileges granted.** All incidental powers, rights, and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

**Sec. 13. Subject to local referendum; procedure.** This act shall take effect when accepted by a majority vote by ballot of the inhabitants of the town of South Berwick at a meeting to be specially called and held for the purpose on or before the 20th day of August, 1940, and the selectmen of the town of South Berwick are hereby authorized to call said meeting. Such special meeting shall be called by the selectmen as aforesaid by issuing their warrant directed to any constable of the town directing him to notify and warn the inhabitants of said town to assemble at the town hall in said South Berwick at such reasonable time not later than said August 20, 1940, as they may direct, to choose a moderator to preside at said meeting; to vote upon the acceptance of this act; to elect trustees for said water district and transact such other business as may properly come before said meeting. In case said selectmen shall refuse or unreasonably neglect to call said meeting it may be called by any justice of the peace in said district upon petition and application of 10 or more inhabitants of said South Berwick. The town clerk of South Berwick shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate South Berwick Water District be accepted?" And the voters shall indicate by placing a cross against the words "Yes" and "No" their opinion of the same. The results shall be declared by the selectmen of South Berwick and due certificate thereof filed by the town clerk with the secretary of state. The clerk of the town of South Berwick shall be clerk ex officio of all meetings of the inhabitants of said water district and shall make and preserve a record of all



such meetings as the records of said town are made and preserved. This act shall take effect 90 days after the final adjournment of the legislature so far as necessary to empower the calling and holding of all of said meetings. The approval of this act in the manner provided by this section shall constitute an acceptance by said water district of the methods of appraisal prescribed by section 7 hereof and shall bind said water district and said water companies, or their successors or assigns thereto.

**Sec. 14. Act void unless property of South Berwick Water Company and South Berwick Water Company, Inc. is acquired.** Sections 2, 3 and 4 of this act shall be inoperative, null and void, unless said water district shall first acquire by purchase or by the exercise of the right of eminent domain, as in this act provided, the plants, properties and franchises, rights and privileges now held by the South Berwick Water Company and South Berwick Water Company, Inc., their successors or assigns.

**Sec. 15. Expenses; how borne.** All costs and expenses arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by section 7 of this act.

**Sec. 16. Rights exercised in accordance with R. S., c. 62.** Nothing herein contained is intended to repeal or shall be construed as repealing the whole or any part of chapter 62 of the revised statutes, as amended. All the rights and duties herein prescribed shall be exercised and performed in accordance with the applicable provisions of chapter 62 of the revised statutes and acts additional thereto and amendatory thereof.