

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

Legislative Document

No. 15

H. P. 20.

House of Representatives, January 9, 1941.

Referred to Committee on Public Utilities and 1,000 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Dwinal of Camden.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT to Incorporate the Knox Water District.

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

Sec. 1. Territorial limits; corporate name; purposes. Subject to the provisions of sections 17 and 18 hereof, the territory and people constituting the city of Rockland, the towns of Camden, Rockport and Thomaston shall constitute a public municipal corporation, under the name of Knox Water District for the purpose of supplying the inhabitants of said city of Rockland and the towns of Camden, Rockport, Thomaston and Owls Head and said municipalities with pure water for domestic, sanitary, and municipal purposes, and the supply of shipping.

Sec. 2. Source of supply. The said Knox Water District, for the purposes of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Mirror lake in the town of Rockport, and Chickawaukee pond situated in Rockland and said Rockport, and from any other source from which the Camden and Rockland Water Company is now authorized to take water.

Sec. 3. Right of eminent domain conferred. The said district for the purposes of its incorporation is hereby authorized to take and hold as for

public uses, by purchase or otherwise, any lands or interests therein, or water rights necessary for erecting and maintaining dams, for flowage, for power, for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and water shed, for laying and maintaining aqueducts and other structures, for taking, distributing, discharging and disposing of water and for rights of way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

Sec. 4. Authorized to lay pipes over public ways. The said district is hereby authorized to lay in and through the streets, roads, ways, highways and bridges in said city and towns, and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authorized to erect dams and reservoirs; to cross navigable waters. Said water district is hereby authorized for the purposes of its incorporation to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes. Said water district is also hereby authorized to lay, construct and maintain its pipes and fixtures in, over and under navigable waters and to build and maintain structures therefor, subject to the laws of the United States.

Sec. 6. Procedure in exercising right of eminent domain. In exercising the right of eminent domain conferred upon it by law from time to time, or any rights of eminent domain through or under the franchise of any water company by it acquired, the said district shall file in the office of the county commissioners of Knox county and record in the registry of deeds in said county plans of the location of all lands or interests therein, or water rights to be taken, with an appropriate description and names of the owners thereof, if known. If for any reason the district fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, it may at any time correct and perfect such taking and file a new description thereof, and in such case the district is liable in damages only for the property for which the owner had not previously been paid, to be assessed as of the time of the original taking; and the district shall not be liable for any acts which

would have been justified if the original taking had been lawful. No entry shall be made on any private lands except to make surveys until the expiration of 10 days from said filing, whereupon possession may be had of all such lands or interests therein or water rights so taken, but title thereto shall not vest in said district until the payment therefor.

Sec. 7. Adjustment of damages; procedure as in laying out a highway.

If any person sustaining damages by any taking as aforesaid shall not agree with the district upon the sum to be paid therefor, either party upon petition to the county commissioners of Knox county may have such damages assessed by them. The procedure and all subsequent proceedings and rights of appeal therefrom shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 8. Procedure in crossing of railroads. In case of any crossing of railroads, unless consent is given by the company owning or operating such railroad, as to place, manner and conditions of the crossing, within 30 days after such consent is requested by such district, the public utilities commission shall, upon petition setting forth a description of said premises and the reasons for said crossing after notice given as said commission may prescribe, determine the place, manner and conditions of such crossing, and all work within the limits of such railroad location shall be done under the supervision of the railroad company and to the satisfaction of said company, but at the expense of said water district, unless otherwise ordered by said public utilities commission.

Sec. 9. Appointment of trustees; term of office; by-laws; compensation; annual reports. All the affairs of said district shall be managed by a board of trustees composed of 5 members who shall be residents in the district and appointed as hereinafter provided. Two of said trustees shall be appointed by the mayor of the city of Rockland subject to approval and confirmation by the city council of said city of Rockland, and also such other trustees as may be necessary to complete the required number of trustees in case one or more of said towns fail to accept said act.

If this act is accepted by the inhabitants of the town of Camden, 1 member of said board shall be appointed by the municipal officers of the town of Camden; otherwise such member shall be appointed by the mayor of the city of Rockland subject to approval and confirmation by the city council for said city of Rockland.

If this act is accepted by the inhabitants of the town of Rockport, 1 member shall be appointed by the municipal officers of the town of Rock-

port; otherwise such member shall be appointed by the mayor of the city of Rockland subject to approval and confirmation by the city council of said City of Rockland.

If this act is accepted by the inhabitants of the town of Thomaston, 1 member of said board shall be appointed by the municipal officers of the town of Thomaston; otherwise such member shall be appointed by the mayor of the city of Rockland; subject to approval and confirmation by the city council of the city of Rockland.

The trustees so to be appointed shall be appointed on or before the 4th Monday of August, 1941.

The municipal officers of the city of Rockland and of the towns comprising the District shall file with the city clerk, or town clerk, as the case may be, of the municipality they respectively represent, a certificate of the appointment of the trustees, or trustee, they have appointed, and such certificates shall be sufficient evidence in all cases of the legality of such appointment. The city clerk, or town clerk, of each municipality concerned, shall file with the trustees of the District a due certificate of the appointment of such trustees, or trustee, by the municipal officers of the municipality they represent, and it shall be the duty of the trustees of said district to see that all certificates showing the appointment of trustees are duly recorded upon the records of said district. The term of office of the trustees appointed on or before the 4th Monday of August, 1941, shall begin on the said 4th Monday of August, 1941.

As soon as convenient after all the members of said board have been so chosen, said trustees shall hold a meeting at the mayor's office in the said city of Rockland, to be called by 1 of said trustees upon such reasonable notice therefor as he deems proper. They shall 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. They may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of the District. At said 1st meeting the trustees so appointed shall determine by lot the term of office of each trustee, so that 1 trustee shall retire on the 4th Monday of August, in the year 1942, on the appointment of his successors; and 1 trustee shall retire on the 4th Monday of August in each year thereafter in like manner, and whenever the term of office of a trustee expires, his successor shall be appointed by the municipal officers of the city or town which appointed him, and in the same manner as herein provided for the first appointment of trustees.

The trustees so chosen shall serve the full term of 5 years; and in case

any vacancy arises in the membership of the board of trustees, it shall be filled in like manner for the unexpired term by appointment by the municipal officers of the city or town wherein the vacancy occurs. When any trustee ceases to be a resident of the city or town which appointed him, he shall vacate such office of trustee and the vacancy shall be filled as aforesaid. All trustees shall be eligible to re-appointment, but no person holding the office of selectman or road commissioner in said towns or a municipal office in said city of Rockland shall be eligible to appointment as trustee. Said trustees may procure an office and incur such expenses as may be necessary.

Each member shall receive in full compensation for his services in whatever capacity, an allowance of \$100 per year plus \$5 for each meeting of the board of trustees which he attends and no more. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said water district, of its financial and physical condition and of such other matters and things pertaining to said district as shall show the inhabitants thereof how said trustees are fulfilling the duties and obligations of their trust—such report to be made and filed with the municipal officers of said city and towns composing the district.

Sec. 10. Authority to purchase; right of eminent domain to take property of Camden and Rockland Water Company. The Knox Water 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 plant, property, franchises, rights and privileges of the Camden and Rockland Water Company, except its cash assets and accounts receivable, including all stocks in other companies, lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said Company, whether the record title thereto is or is not in said Camden and Rockland Water Company. Said Camden and Rockland Water Company is hereby authorized to sell, transfer and convey its franchises and property to said Water District. All said franchises and properties shall be taken subject to all bonds, mortgages, liens, and encumbrances thereon, all of which bonds, mortgages, liens and encumbrances shall be assumed and paid by the said Knox Water District.

Sec. 11. Method of acquiring the properties of Camden and Rockland Water Company. In case said trustees fail to agree with said Camden and Rockland Water Company upon the terms of purchase of the above mentioned property on or before the 1st day of January, 1942, said District through its board of trustees aforesaid is hereby authorized to take all of

said plant, property and franchises, subject however to all mortgages, liens and encumbrances thereon as stated in section 10, as and for public uses, by a petition therefor in the manner as hereinafter provided, wherein said water company and its mortgagees shall be parties defendant; and said Water District through its trustees is hereby authorized at any time after said 1st day of January, 1942, and before the 1st day of July, 1942, to file a petition in the clerk's office of the supreme judicial court for the county of Knox, addressed to any justice of the said court, who after due notice to said Camden and Rockland Water Company and its mortgagees, shall after hearing and within 60 days after the filing of said petition, appoint 3 disinterested appraisers, none of whom shall be residents of the county of Knox, 1 of whom shall be a member of the public utilities commission of the state of Maine, and 1 of whom shall be conversant with hydraulic engineering by education, training or previous experience, for the purpose of fixing the valuation of the plant, property and franchises of said water company.

Said petition partaking as it does of the principles of equity may be entered on the equity side of the docket, and said petition shall not be dismissed after filing except by consent of both parties but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. At the hearing aforesaid, or at any time during the proceedings, such justice, upon motion of the petitioner, may order, if the same are not voluntarily produced, under proper terms, the production in court for the inspection of the petitioner all the books and papers pertinent to the issues to be heard by said appraisers, the terms and conditions of so producing or filing said 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, 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 said water company shall file in the clerk's office of the supreme judicial court for the county of Knox for the inspection of the petitioner, so far as they relate to the service in the said city and towns, the following: First: Schedule showing names, residences and water service of all customers on the 1st day of January in the year 1942, with the rates charged therefor; Second: copies of all contracts in force on said 1st day of January, 1942; Third: an itemized statement of the gross income earned during its last complete fiscal year up to said 1st day of January, 1942, and all operating expenses and fixed charges paid or accrued during said period, and properly chargeable thereto; Fourth: a memoranda of all real estate, water rights or interests therein owned or controlled on said 1st day of January,

1942, with such brief description thereof as will reasonably identify the same; Fifth: brief description, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate shutoffs, fixtures and machinery, and all rights of way for maintenance of pipe lines, and all other physical elements in such water system, giving in detail quantities, size, lengths, dates of installation when known, and specifying the streets, rights of way and where situated; Sixth: an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said 1st day of January, 1942. Any expenses incurred by the Camden and Rockland Water Company in preparing copies of any papers or other data filed by it in compliance with such order of court shall be borne by the water district. Such orders may be enforced from time to time by any justice of said supreme judicial court, upon motion of either party, as such justice may deem reasonable and proper in the premises. The sitting justice 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 by examination or tests the true condition of the mains and pipes of said water company, externally or internally, in the presence of the officers or agents of said water company, the entire expense of such examination or tests to be borne by said water district. The said appraisers shall have the power to compel the attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary to a full understanding by them of the matter in question, and may administer oaths; and any witness or person in charge of said books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalty and proceedings so far as applicable as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions.

The report of the stenographers appointed by the appraisers, certified by said appraisers as correct, shall be filed with the award to be made by said appraisers and shall be legal evidence of all proceedings so reported. The appraisers so appointed shall after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive just compensation for all the same. The 1st day of January, 1942, shall be the date as of which the valuations aforesaid shall be fixed and from which date interest on said award, over and above the amount of all mortgages, liens and encumbrances thereon assumed by said district as of said date shall run, at the rate of 4% per year, and all net 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 the

office of the clerk of the supreme judicial court for the county of Knox, within 4 months after their appointment, unless the time is extended by the court for cause, and such single justice, or in the 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 requires; and in case of such rejection or recommittal such justice may order a new hearing and a new report thereon, if justice so requires.

Upon the confirmation of said report, the award of the appraisers shall be conclusive as to valuation, and the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including application of the purchase money, if so requested and the transfer of property and franchises, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. The justice making such final decree shall, upon request of either party, make separate findings of law and fact. All findings of fact by said court shall be final, but either party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied only 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 so signed, entered, and filed, and notice thereof has been given by the clerk 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 plant, property and franchises, or any of them, are transferred in accordance with said final decree and before payment therefor as hereinbefore provided, said court sitting in said county of Knox, by a single justice thereof, shall upon motion of either party after notice and hearing, take account of all receipts and expenditures, properly had or incurred by the Camden and Rockland Water Company belonging to the period from and after said 1st day of January, 1942, and all net rents and profits accruing thereafter, and shall order the net balance due to any party to be added to or deducted from, the amount to be paid under said final decree as the case may be. All findings of law and fact by such justice at said hearing shall be final.

On payment or tender by said district of the amount so determined and the performance of all other terms and conditions so imposed by the court, the entire plant, property and franchises of said Camden and Rockland Water Company described in section 10 shall become vested in said water

district, subject to all liens, mortgages and encumbrances theretofore created by said water company. Upon such payment or tender by said district, the said Camden and Rockland Water Company, if so requested by said district, shall execute and deliver its quitclaim deed to said district of its entire plant, property and franchises, as described in section 10, in order to complete the record title thereof. Either party may file and prosecute motions and petitions relating to the premises at any stage of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting justice, or in case of his inability to act, any justice of said court appointed by the chief justice may after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require. Nothing herein contained shall preclude said district from acquiring said properties from said Camden and Rockland Water Company at any time by mutual agreement.

Sec. 12. Authority to contract for municipal supply; all valid contracts to be assumed. Said water district is hereby authorized to make contracts with the said city and towns or any municipal corporation therein for the purpose of supplying water as contemplated by this act, and the said city and towns by their proper officers or any municipal corporation in said city or towns by its proper officers, is hereby authorized to enter into a contract with said district for a supply of water for public uses on such terms and for such time as the parties may agree, which contract when made shall be legal and binding on all parties thereto, and said city or towns or any municipal corporation therein for said purposes may raise money in the same manner as for other municipal charges. All valid contracts now existing between said Camden and Rockland Water Company and any persons, corporations or municipal corporations for supplying water shall be assumed and carried out by said Knox Water District provided attested copies of said contracts shall have been duly filed by said company in accordance with the order of the court as herein provided.

Sec. 13. Authority to borrow money. For accomplishing the purposes of this act, said water district through its trustees is authorized to borrow money temporarily and to issue therefor the negotiable notes of the district, and for the purpose of refunding the indebtedness so created, for paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of a district; in

acquiring the properties and franchises of said Camden and Rockland Water Company by purchase or otherwise, of assuming and paying all mortgages, liens, and encumbrances thereon as provided in sections 10 and 11, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant and making renewals, extensions, additions and improvements to the same, and protecting the water shed, the said water district through its trustees may from time to time issue bonds of the district to an amount or amounts necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said water district, which is hereby declared to be a quasi-municipal corporation within the meaning of section 117 of chapter 56 of the revised statutes, and all of the provisions of said section shall be applicable thereto. Said notes and bonds shall be legal investments for savings banks and shall be exempt from taxation.

Sec. 14. Water rates; sinking fund and surplus. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them. Said rates shall be so established as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the water system.

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

3. To provide each year a sum equal to not less than 1 nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such indebtedness. 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.

4. If any surplus remains at the end of the year, it may be divided between the municipalities accepting this act and so composing the district in the same proportions as each contributed to the gross earnings of the district's water system, and, in order that these proportions may be readily determined, all moneys received for water in each of said municipalities shall be entered in separate accounts so that the total amount thereof can be easily ascertained.

Sec. 15. Incidental rights and powers granted. All incidental rights, powers and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

Sec. 16. Provisions for acceptances of the charter by said towns. This act in so far as it includes the territory and the people constituting the towns of Camden, Rockport and Thomaston as a part of the Knox Water District as provided in section 1 hereof shall not take effect respectively as to said Camden, Rockport and Thomaston unless accepted and approved by majority vote of the legal voters respectively of said towns, voting at elections to be specially called and held for the purpose in each of said towns on the 1st Monday of August, 1941. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections in such towns, provided however that the selectmen of said respective towns shall not be required to prepare for posting nor the clerk thereof to post a new list of voters. Said selectmen shall be in session in each of said towns the 3 secular days next preceding said special election for the purpose of revising the lists. The town clerks of the respective towns shall reduce the subject matter of this act to the following question: "Shall the Act to incorporate the Knox Water District be accepted?" And the voters shall indicate by a cross placed against the words "yes" or "no," their opinion of the same. The result of the election in each town shall be declared by the moderator of said meeting and due certificate thereof filed by the town clerk with the secretary of state, and such certificate shall be sufficient evidence in all cases of the legality of such election and the result thereof. Should either of said towns fail to accept this act, then the territory and people within such town so failing to accept the act shall not be a part of said Knox Water District, but said Water District shall supply water to such towns and to the inhabitants thereof under the provisions of this act.

Sec. 17. Provision for acceptance of the charter by the city of Rockland. This act subject to the provisions of section 16 shall take effect when approved by a majority vote of the legal voters of the city of Rockland voting at an election to be specially called and held for the purpose on the 1st Monday of August, 1941. Such special election shall be called, advertised and conducted according to the law relating to municipal elections provided however that the board of registration shall not be required to prepare for posting or the city clerk to post a new list of voters, and for the purpose of registration of voters said board shall be in session the 3 secular days next preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said list and to complete and close up its records of said session. The city clerk shall reduce the subject matter of this act to the following question: "Shall the Act to incorporate

the Knox Water District be accepted?" And the voters shall indicate by a cross placed against the word "yes" or "no" their opinion of the same. The result shall be declared by the municipal officers of said city and due certificate thereof filed by the city clerk with the secretary of state, and such certificate shall be sufficient evidence in all cases of the legality of such election and the result thereof.

Sec. 18. Certain territory in city of Rockland excluded from District. Whenever the word "Rockland" is used in this act, it shall be construed to include all of the territory and inhabitants of the city of Rockland except the territory and inhabitants westerly of the following line: Beginning at a point on the easterly side of Meadow brook, so-called, at a point where said easterly line intersects the town line of Thomaston; thence north-easterly along the east line of said Meadow brook to Chickawaukee pond. In all elections hereunder, the board of registration shall exclude from their lists and from all check lists the legal voters that are residents of said excepted portion of said city of Rockland, and all warrants shall be varied accordingly to show that only the voters, residents within the territorial limits of the water district are entitled to vote hereunder.

Sec. 19. Certain sections inoperative on failure to acquire Camden and Rockland Water Company plant. If said water district shall fail to acquire by purchase or by the exercise of the right of eminent domain as in this act provided, the plant, property, franchises, rights and privileges owned by the Camden and Rockland Water Company and used or usable in supplying water to the said city and towns, then the provisions of this act relative to the acquisition of said property and franchises of the Camden and Rockland Water Company by said water district and all the provisions of section 2 of this act shall be inoperative, null and void.

Sec. 20. Public utilities commission statutes shall govern the district. Nothing herein contained is intended to repeal or shall be construed as repealing the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 62 of the revised statutes and all acts amendatory thereof or additional thereto.

Sec. 21. Taxation. The town of Rockport is hereby authorized to assess a tax on the property of the water district situated therein, to an amount not to exceed the difference between what it annually pays to the Camden and Rockland Water Company for water for hydrants and other municipal purposes, at the time said water district is ready to supply water, and the amount assessed upon the properties of said Camden and Rockland

Water Company in said Rockport for the tax year of 1940, provided, however, that if the rates established by said water district for hydrants and other municipal purposes in said Rockport shall be less than it paid in said calendar year of 1940, the tax herein authorized to be assessed shall be reduced to that extent.

Sec. 22. Costs and expenses of taking, directed by court. All costs and expenses of the taking of the property of the Camden and Rockland Water Company arising under the provisions of this act shall be paid and borne as directed by the court in the final decree provided by section 11.