

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 Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 885

H. P. 1346

House of Representatives, March 31, 1943.

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

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT to Incorporate the Bethel Water District.

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

Sec. 1. Bethel Water District. Subject to the other provisions of this act, the territory and people constituting the town of Bethel, in the county of Oxford, shall constitute a body politic and corporate by the name of the Bethel Water District for the purpose of supplying the inhabitants of said town with pure water for domestic, sanitary, commercial, and municipal purposes.

Sec. 2. May take water for certain purposes. The said district, for the purpose of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Chapman brook in said Bethel, and its watershed part of which is in the town of Newry, and subject to the other provisions of this act such other sources as from time to time said district may determine to be necessary or desirable to better carry out the purposes of this act.

Sec. 3. May hold certain land for certain purposes. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase or otherwise including by right of eminent domain any land or interest therein or water rights necessary for erecting and maintaining dams, flowage, power for pumping its water supply through

its mains, reservoirs, preserving the purity of the water and water shed, 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.

The said 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. Provided, however, nothing herein contained shall be construed as authorizing said water district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized thereto herein or by subsequent act of the legislature, or as provided in section 9 hereof.

Sec. 4. May maintain pipes and aqueducts. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the town of Bethel and across private lands, and to maintain, repair, replace and extend all such pipes, aqueducts and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipe or aqueducts in any street, road, way or highway or across any private land it shall cause the same to be done with as little obstruction as practicable to the public travel and without unnecessary inconvenience to the owner of such private land, 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. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in section 9 of this act, the said district in exercising, from time to time, any right of eminent domain conferred upon it by law or through or under the franchise of any water company by it acquired shall file written application with the public utilities commission requesting its approval of the proposed taking. Such application shall describe the property or rights to be taken, the purpose of the taking, and shall name all parties who may be interested therein; the commission thereupon shall appoint a time for a hearing near the premises, and shall require such notice as the commission may direct to be given to the persons interested at least 14 days before the date of the hearing; the commission then may view the premises, hear the parties, and shall determine how much, if any, of the property described in the petition should be taken for the reasonable purposes of the water district and for the safe, economical and efficient furnishing of an adequate water supply; and in

authorizing any taking the commission may attach such reasonable terms, limitations and restrictions as justice may require. If the commission shall find that any of the property described in the application is necessary for the aforesaid purposes of the district, it shall make a certificate containing a definite description of the property to be taken and of any terms, restrictions and limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the clerk of the commission; and when such copy of the certificate is filed with the clerk of courts in the county where the property lies, the property shall be deemed and treated as taken; provided, however, that when property is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice to the tenant for life, shall require notice by publication, in such manner as it may deem proper, to all others interested. Entry may be made on any private land prior to the filing of any such application for the purpose of making surveys, the district being responsible for any damage resulting from such entry, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording of such certificate as hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

Sec. 6. Provision for damages on taking of land. If any person sustaining damages by any taking as aforesaid other than the original acquisition of said Bethel Water Company shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Oxford county, may have said damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon 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. 7. Provisions if public utility is crossed by the district. In case of any crossing of a public utility, unless consent is given by the company owning or operating such public utility as to place, manner and conditions of the crossing, within 30 days after such consent is requested by said district, the public utilities commission shall determine the place, manner, and conditions of such crossing; and all work within the limits of such public utility location shall be done under the supervision and to the satisfaction of such utility company, but at the expense of the district.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of 3 trustees, residents of Bethel, to be appointed by the

selectmen of the town of Bethel, and who shall be sworn to the faithful performance of their duties, the initial appointment to be made within 30 days after the acceptance of this act by the inhabitants of the town of Bethel as hereinafter provided, but no person shall at the same time hold the office of selectman of the town of Bethel and member of the board of trustees of said district. The compensation of such trustees for the year ending April 1 following such town meeting shall be determined by vote of the district at each annual meeting, such compensation to be paid by the Bethel Water District. As soon as convenient after the members of said board shall have been elected, they shall hold a meeting in the town of Bethel, to be called by any member thereof in writing designating the time and place and delivered in hand to the other 2 members not less than 2 full days before such meeting, provided, however, that notice of such meeting may be dispensed with by a written waiver signed by each of such trustees and made a part of the records of said first meeting. They shall then organize by the election from their own number a chairman and a clerk both of whom shall be sworn to the faithful performance of their duties, adopt a corporate seal, and choose a treasurer. The term of office of said trustees shall be for 3 years to terminate on the 1st day of April save that at such 1st meeting they shall designate by agreement, or upon failure to agree, by lot, the member whose term shall expire on the 1st day of April of each of the 3 years next succeeding, provided however that, excepting vacancies caused by any trustee ceasing to be a resident of said town of Bethel, the term of office of any such trustee shall continue until his successor has been elected and qualified.

Vacancy occurring in said board shall be filled by the selectmen of the town of Bethel for the unexpired term. When any trustee ceases to be a resident of the said town of Bethel, he thereby vacates the office of trustee. The said board of trustees may ordain and establish such by-laws, not inconsistent with law or regulations of the public utilities commission, as they deem necessary for their own convenience and the proper management of the affairs of the district, wherein they may make provision for all other needful officers and agents, and prescribe the tenure of all officers and agents that they may be authorized to choose. It shall be within the discretion of the board to choose, and fix the compensation of such agents and officers other than their own salaries. It shall be within the discretion of the board to choose all their officers and agents except their chairman and clerk from without their own membership. The treasurer shall give bond to the district in such penal sum and with such sureties as may be prescribed and approved by the trustees.

Sec. 9. Acquisition of property of Bethel Water Company authorized.

The said Bethel Water District is hereby authorized and empowered to acquire by purchase, by the exercise of the right of eminent domain or otherwise, which right is hereby expressly delegated to said district for said purpose, the entire plants, properties, franchises, rights and privileges of the Bethel Water Company except their cash assets and accounts receivable, including all stocks in other companies, lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tolls and all apparatus and appliances owned by said Bethel Water Company, whether or not their aggregate value exceeds the value limit named in the charter of said company. The said Bethel Water Company is hereby authorized to sell and transfer its franchises and properties to said water district. All said franchises and properties shall be taken subject to all valid debenture bonds, mortgages, liens and encumbrances thereon, all of which debenture bonds, mortgages, and liens and encumbrances shall be assumed and paid by said Bethel Water District.

Sec. 10. Procedure in case of disagreement as to price to be paid to Bethel Water Company. If the said trustees fail to agree with said Bethel Water Company upon terms of purchase on or before January 1, 1944, the said water district through its trustees is hereby authorized, at any time prior to July 1st, 1944 to take all the plants, properties and franchises of said Bethel Water Company, subject, however, to all valid mortgages, liens and encumbrances thereon, as for public uses, by a petition therefor in the manner hereinafter provided, wherein said Bethel Water Company and its mortgagees shall be the parties defendant; such petition shall be filed in the office of the clerk of the superior court for the county of Oxford in term time or vacation, addressed to any justice thereof, who, after notice to Bethel Water Company and its mortgagees and after hearing and within 60 days after the filing of said petition or within such further time as said justice shall determine necessary or advisable, appoint 3 disinterested appraisers, none of whom shall be residents of Oxford County, for the purpose of fixing the valuations respectively of the plant, property and franchises of said Bethel Water Company. Said petition shall not be dismissed after filing, except by consent, but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. Such justice of the superior court upon motion of the petitioner, if the same are not voluntarily produced, may order under proper terms the production for inspection by the petitioner, of all books and papers pertinent to the issues and necessary for a full understanding of the matters to be heard by said appraisers. At such hearing, such justice upon

motion of the petitioner, may fix a time at which the said water company shall file in the clerk's office of the superior court for the county of Oxford for the inspection of the petitioner, so far as they relate to the service in the town of Bethel, the following: first, schedule showing the names, residences and water service of all its customers on the 1st day of January of the year in which said order is entered, with the rate charged therefor; second, copies of all contracts in force on said 1st day of January of the year in which order is entered; third, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of January of the year in which said order is entered, 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 1st day of January of the year in which said order is entered, with such brief description thereof as will 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 system, giving in detail quantities, sizes, 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 1st day of January of the year in which order is entered. Such orders may be enforced from time to time by any justice of said superior 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 company, externally or internally, in the presence of the officers or agents of said water company, 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 books and papers pertinent and necessary for a full understanding of the matter, to the issue and may administer oaths; and any witnesses or person in charge of such books or papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the superior court. Depositions may be taken as in civil actions. The report of a stenographer, 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 due notice and hearing, fix the respective valuations of the plants, properties and

franchises of said Bethel Water Company at what they are fairly and equitably worth, so that said Bethel Water Company shall receive just compensation for the same. The 1st day of January preceding the date of such appraisal shall be the date as of which the valuations aforesaid shall be fixed, from which date interest on said award at the rate of 6% per annum shall run and all net rents and profits accruing thereafter shall belong to said Bethel Water District. The report of said appraisers or of a majority of them, shall be filed in the office of the clerk of said superior court in term time or in vacation within 6 months after their appointment, unless the time is extended by the court for cause. After said report is filed, such single justice, so appointing said appraisers, or in case of his inability to act, then any justice designated for the purpose, by the chief justice, may after notice and hearing, confirm or reject the same or recommit, if justice so requires, and in case of such rejection or recommitment such justice may order new hearing and new report thereon. Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property, plant and franchises of said company. Upon the confirmation of the report, the court so sitting, in term time or vacation, shall thereupon, after hearing, make decree upon the whole matter, including provisions for the transfer of the properties and franchises, fix the time within which said trustees may accept said award and acquire said property or forfeit all rights of acquisition of such property as herein provided, jurisdiction over which is hereby conferred with the same power to enforce said decree as in equity cases. All the costs and expenses arising under such petition and appraisal shall be paid and borne as may be decreed by the court. The findings of such justice as to such costs and expenses and their apportionment shall be final. In all other matters the justice making such decree, shall, upon request of any of the parties, make separate findings of law and fact. All such findings of fact shall be final, but any party aggrieved may take exceptions to any rulings of law so made, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Unless the time is extended by the court 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 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 of such exceptions and

there heard unless otherwise agreed, or the law court shall for good cause order a further time for hearing thereon. Upon such hearing the law court may confirm, reverse or modify the decree of the court below, or remand the cause for further proceedings as it deems proper. During the pendency of such exceptions the cause shall remain on the docket of the court below marked "law" and decree shall be entered thereon by a single justice, in term time or in vacation, in accordance with the certificate and opinion of the law court. Before the aforesaid plants, properties and franchises, or any of them, are transferred in accordance with such decree, and before the payment therefor, the court sitting in said county of Oxford, or a single justice thereof, as hereinbefore provided, shall, upon motion of any party, after notice and hearing, take account of all receipts and expenditures properly had and incurred by said Bethel Water Company during the period from and after January 1st preceding the date of said appraisal, 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 fact by such single justice at such hearings shall be final. On payment or tender by said Bethel Water District of the amounts so fixed and the performance of all other terms and conditions so imposed by the court, the entire plants, properties and franchises respectively of said Bethel Water Company, shall become vested in Bethel Water District, subject to all valid liens, mortgages and encumbrances theretofore created by said Bethel Water Company. If a vacancy occurs at any time in said board of appraisers, from any cause, any justice of the superior court, may, in term time or in vacation, 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. Either party may file and prosecute motions and partitions relating to the premises at any state of the proceedings.

Sec. 11. Prior contracts to be assumed. All valid contracts of said Bethel Water Company existing at the time of the filing of such petition shall, subject to the other provisions of this act, be assumed by said Bethel water district.

Sec. 12. Power to issue notes and bonds. For accomplishing the purpose of this act, said Bethel water district, through its trustees, is authorized to borrow money temporarily and to issue therefor the interest-bearing negotiable notes of the district, and for the purposes of refunding the indebtedness so created, of paying any necessary expenses and liabilities, in-

curred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the properties and franchises of the Bethel Water Company, of assuming and paying the mortgages, liens and encumbrances thereon, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant or plants, and making renewals, extensions, additions and improvements to the same, the said Bethel water district, through its trustees, may subject to the general provisions of law applicable thereto, from time to time issue bonds of the district, in such amount or amounts as in the judgment of the trustees may be necessary. Said notes and bonds shall be legal obligations of said Bethel water district, which is hereby declared to be a quasi municipal corporation within the meaning of section 116 and 117 of chapter 56 of the revised statutes of 1930, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 13. Rates. 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 and approved by the public utilities commission. The said rates shall be so established as to provide revenue for the following purposes :

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

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

III. To provide each year a sum equal to not less than 2% 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. 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 2% of the amount of the bonds so issued shall mature and be retired each year.

IV. Any surplus remaining at the end of the year may be carried as a special reserve fund or added to the sinking fund.

Sec. 14. Incidental powers granted. All incidental powers, rights, and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created, in-

cluding the right to contract with persons and corporations, including the town of Bethel, and said town of Bethel is authorized to contract with it for the supply of water for municipal purposes.

Sec. 15. Exemption from taxation. The property of said district, excepting such part as lies within the town of Newry, shall be exempt from all taxation.

Sec. 16. Duration of act. If said Bethel water district shall fail to purchase or file its partition to take by right of eminent domain before July 1st, 1944 as provided in this act, the plant, properties, franchises, rights, and privileges owned by the Bethel Water Company and used or usable in supplying water in the town of Bethel then subject to the other provisions hereof, this act shall become null and void.

Sec. 17. Effective date of act; referendum. This act shall take effect 90 days after the adjournment of the legislature for the purpose of permitting its submission to the legal voters of the said town of Bethel at a special election to be called and held at such time as the selectmen of the town of Bethel shall determine, but not later than the 1st day of November, 1943, but if and only if the total number of votes cast for and against the acceptance of this act in said special election equals or exceeds 20% of the total number of names on the check list of voters used at the previous gubernatorial election, but failure of approval by the necessary percentage of voters at such election shall not prevent a second election held at a regular town meeting within the time limitation of section 16 hereof. Such special election shall be called, warned, and conducted according to the law relating to municipal elections. The board of registration shall prepare and furnish separate check lists for such of the voters within said district as are then legal voters of said town and reside in said district, and all notices, warrants or other proceedings shall be varied accordingly so as to show that only such voters as reside in said district as aforesaid are entitled to vote upon the above question. Such check list shall be used at the election held for the adoption of this act. Such special election shall be called, advertised and conducted according to the law relating to state elections; provided, however, the board of registration shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said board of registration shall be in session on the 3 secular days next preceding said election, the 1st and 2nd days thereof to be devoted to registration of voters and the last day to enable the board to verify the correction of said lists and to complete and close up its records of said session. The town clerk shall reduce the subject of this act to the

following question: "Shall the act to incorporate the Bethel 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 shall be declared by the municipal officers and due certificate thereof filed with the secretary of state by the clerk of said town.

Sec. 18. Existing statutes not affected; rights conferred subject to provisions of R. S., c. 62. 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 of 1930, and all acts amendatory thereof or additional thereto.

Sec. 19. Annual meeting. The annual meeting of the district shall be held in the district during the month of April of each year at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. Notice thereof signed by the chairman or clerk of the board shall be conspicuously posted in 2 public places within said district not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time. Notice of special meeting shall state the business to be transacted thereat. Ten per cent of the voters qualified to vote in such meeting shall constitute a quorum. If for any reason a legally sufficient annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 2 months from said date. All persons resident in said district and qualified to vote for governor under the laws of this state shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

The trustees shall prepare and file with the clerk of the town of Bethel on or before the 20th day of February in each year a detailed statement of all its business transacted during the preceding calendar year, which report shall be open to inspection by any interested party during the usual office hours of said town clerk.

Sec. 20. Trustees granted certain powers of selectmen. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing list of the persons qualified to vote in said district, and for that purpose they shall be in session at the place designated for holding the meeting between the hours of 10 o'clock in the forenoon and 12 o'clock noon on the secular day next before

the date of every meeting; and 2 hours before the opening of the meeting, and notice thereof shall be given in the call of the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.