

# MAINE STATE LEGISLATURE

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

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**Legislative Document**

**No. 1074**

H. P. 1470

House of Representatives, February 21, 1947.

Transmitted by revisor of statutes pursuant to joint order

Referred to the Committee of Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Clements of Belfast.

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## STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-SEVEN

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### **AN ACT to Create the Searsport Water District.**

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

**Sec. 1. Territorial limits; name; purposes.** The inhabitants and territory within the town of Searsport shall be and hereby are constituted a body politic and corporate by the name of Searsport Water District for the purpose of supplying the town of Searsport and the inhabitants of said town or any part of said town with pure water for domestic, sanitary, agricultural, commercial, industrial and all lawful municipal purposes; provided, however, that the said district shall not construct any system of pipe lines or development without first having submitted its plans to the public utilities commission and obtained its advice therefor in writing under the power vested in said commission by section 13 of chapter 40 of the revised statutes of 1944.

**Sec. 2. Source of supply.** For effecting and carrying out the purposes of its incorporation, the said district is hereby authorized to take, hold, divert, use and distribute water from any surface or underground brook, stream, spring, vein of water or other water sources in the town of Searsport or from Boyd's pond, also known as Half Moon pond, in the town of Stockton Springs.

**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, including the exercise of eminent domain, any land or interest 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 watershed, 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.

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 5 hereof.

**Sec. 4. Authorized to lay mains, pipes, conduits, etc. through public ways and across private lands.** The said district is hereby authorized to lay in and through the streets, roads, way and highways and across private lands and to maintain, repair and replace, all such pipes, mains, conduits, 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. Procedure in crossing public utility.** In case of any crossing of any 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 on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

**Sec. 6. Procedure in exercising right of eminent domain.** After the original acquisition for which provision is made in sections 11 and 12 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 fran-

chise 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 shall then 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 or remainder is contingent as to the persons in whom it may vest at the termination of 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.

If any person, sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party upon petition to the county commissioners of Waldo county may have said damages assessed by them; the procedure and all subsequent proceedings and rights 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. Board of trustees, how elected; meetings; vacancies, how filled.** All the affairs of said district shall be managed by a board of 3 trustees, resident therein, who shall be appointed by the municipal officers of the town of Searsport. They shall hold office as hereinafter provided and until their respective successors are appointed and qualified. Whenever the term of office of a trustee expires, the municipal officers of the town of Searsport shall appoint a successor to serve the full term of 3 years, and in case of any other vacancy arising from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of said district, his office as trustee shall be declared vacant. During his term of office, no selectman of said town of Searsport shall serve as a member of the board of trustees of the district.

The first board of trustees shall be appointed within 10 days after the acceptance of this act by the voters of said district, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafter, 1 member shall be appointed at the time of each annual meeting to serve for a term of 3 years. As soon as convenient after their appointment the trustees first appointed shall hold a meeting at some convenient place in the district 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 the meeting; provided, however, that they may meet by agreement and waiver without such notice. They shall then organize by the election of a chairman and clerk from their own number, adopt a corporate seal and by-laws, and perform any other acts within the powers delegated to them by law. As necessary, they may choose agents and other needful officers who shall serve at their pleasure, and whose compensation shall be fixed by said trustees. They shall choose annually a treasurer to serve for a term of 1 year, fix the treasurer's salary which shall in no case exceed \$200 per year, and fill vacancies in that office. The treasurer shall furnish a bond, issued in such sum by a surety company as the trustees may approve, and the expense of securing the bond is to be borne by the district. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor, except as trustees, unless authorized by vote of the municipal officers of the town of Searsport. The compensation of the trustees shall not exceed \$50 each per year unless otherwise provided by vote as above defined.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk pro tempore. They shall make and publish an annual report which shall also contain a report of the treasurer.

**Sec. 8. Annual meeting of district; qualification of voters of district.** After the acceptance of this charter and the organization of the board, the annual meeting of the district shall be held within the district on the 2nd Monday of March, 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 the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. Ten per cent of the voters qualified to vote in such meetings 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.

**Sec. 9. 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 lists 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 also 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.

**Sec. 10. District and town authorized to make contracts.** Said district through its trustees is authorized to contract with persons and corporations, including the town of Searsport and said town of Searsport is authorized to contract with it for the supply of water and facilities for municipal purposes.

**Sec. 11. Authorized to acquire property and franchises of Searsport Water Company.** 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 plant, properties, franchises, rights and privileges, except cash assets and accounts receivable, owned by the Searsport Water Com-

pany, situate in the town of Searsport including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the town of Searsport. If and when so acquired, the said district, in addition to the powers conferred by this act, shall have and enjoy and be entitled to exercise all the rights, privileges and franchises of said Searsport Water Company and may do and perform any and all the acts and things authorized by the original charter of said Searsport Water Company, as amended, insofar as they are not inconsistent with the provisions of this act.

**Sec. 12. Procedure in case trustees and water company fail to agree upon terms of purchase.** In case said trustees fail to agree with said Searsport Water Company upon the terms of purchase of the above-mentioned property, on or before January 1, 1948, said district, through its trustees aforesaid, is hereby authorized to take said plant, property and franchises, as for public use by petition therefor in the manner hereinafter provided. And said district, through its trustees, is hereby authorized on or before July 1, 1948 to file a petition in the clerk's office of the supreme judicial court for the county of Waldo, in term time or in vacation addressed to any judge of such court, who, after due notice to said Searsport Water Company and its mortgagees, shall, after hearing and within 30 days after the date on which said petition is returnable, appoint 3 disinterested appraisers for the purpose of fixing a valuation of said plant, property, 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, of all books and papers pertinent to the issue and necessary for a 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 company shall file in the clerk's office of the supreme judicial court for the county of Waldo for the inspection of the petitioner, so far as they relate to the service in the town of Searsport, the following: 1st, schedule showing the names, residences and water service of all its customers of the Searsport Water Company on the 1st day of January, 1948, with the rates charged therefor; 2nd, copies of all contracts in force on said 1st day of January, 1948; 3rd, an itemized state-

ment of the gross income earned during its last complete fiscal year and up to said 1st day of January, 1948; and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; 4th, a memorandum of all real estate, water rights or interest therein, owned or controlled on said 1st day of January, 1948 with such brief description thereof as will reasonably identify the same; 5th, brief descriptions, specifications, and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, shut-off boxes, conduits, 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; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said 1st day of January, 1948. 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 water mains and pipes and conduits of said water company, externally and internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by the said 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 witnesses 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 plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive just compensation for all and the same. The 1st day of January, 1948, 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 district. The reports 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. Before a commission is issued to said appraisers either party may ask for instruc-



tions to said appraisers, and all questions of law arising upon said request 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 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 decree 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 question 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 plant, property 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 and after notice and hearing, take account of all receipts and expenditures properly had or incurred by the Searsport Water Company in respect of the territory comprising said district belonging to the period, from and after said 1st day of January, 1948, 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 just justice at such 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 said court, the entire plant, property and franchises of Searsport Water Company used and usable in supplying water in the town of Sears-Searsport shall become invested in said district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, but 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, ap-

point 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 company at any time by mutual agreement.

**Sec. 13. Valid contracts of water company to be assumed by the district.** All valid contracts now existing between the Searsport Water Company and any person or corporation for supply water in the town of Searsport shall, in the event of such acquisition, be assumed and carried out by said Searsport Water District.

**Sec. 14. Authorized to negotiate temporary loans and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks.** For accomplishing the purposes of this act, said district, through its trustees, is authorized to borrow money from time to time, and to issue therefor the interest bearing negotiable notes of the district, maturing serially or otherwise, and to make subsequent renewals of the same in whole or in part, and for said purposes and for the purpose of refunding any notes, bonds or other lawful indebtedness and to establish a fund therefor, of obtaining or providing money to pay or to meet any necessary expenses and liabilities under the provisions of this act, including expenses in the creation of this district, in acquiring the aforesaid properties and franchises of Searsport Water Company by purchase or otherwise, in securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant system and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor, maturing at one time or in uniform or varying installments, with or without call provisions and at or without any premium. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of sections 132 and 133 of chapter 49 of the revised statutes of 1944. The said notes and bonds shall be legal investments for savings banks.

**Sec. 15. Property tax exempt.** The property of said district shall be exempt from all taxation by the town of Searsport.

**Sec. 16. Water rates; application of revenue; sinking fund.** 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 service used by them, and said rates shall not be

discriminatory and the water rates shall be subject to the approval of the public utilities commission. Said water rates shall be so established as to provide revenue for the following purposes:

1. To pay current expenses for operating and maintaining the water system.
2. To provide for the payment of the interest on the indebtedness created 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 by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said 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 1% of the amount of the bonds so issued shall mature and be retired each year.
4. If any surplus remains at the end of the year, it may be turned into the sinking fund or transferred in whole or in part to the treasurer of the town of Searsport for the use of the inhabitants thereof, at the discretion of the trustees.

**Sec. 17. Incidental powers 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. 18. Local referendum for the town of Searsport; meeting; how called; certificate to secretary of state.** This act shall take effect except as hereinafter provided when accepted at an election specially called and held for the purpose, but only if the total number of votes cast for and against acceptance of this act in said special election equals or exceeds 20% of the total number of names on the check list of voters of said district provided for herein, which check list shall be used at such election; but failure of approval by the necessary percentage of voters shall not prevent subsequent elections. Said elections shall be called by the municipal officers of the town of Searsport and shall be held at the regular voting place in the town; the dates of said elections shall be determined by said municipal officers but the 1st such meeting shall be held prior to January 1, 1948. The municipal officers 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 special elections shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, the municipal officers shall not be required to prepare nor the town clerk to post a new list of voters; and for this purpose said municipal officers shall be in session on the secular day next preceding said election, and on the day of said election until the polls are closed, the days to be devoted to registration of voters and to the verification and correction of said lists and to complete and close up its records of said session. Absent voting ballots shall not be used. The town clerk shall reduce the subject of this act to the following question: "Shall the act to create the Searsport 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. 19. Act void unless property of water company is acquired.** If said district shall fail to purchase or file its petition to take by eminent domain before July 1, 1948 as in this act provided, the plant, properties, franchises, rights and privileges owned by the Searsport Water Company and used and usable in supplying water in the town of Searsport then this act shall become null and void.

**Sec. 20. Act effective for referendum.** Despite the provisions of section 18 hereof providing for acceptance of this act by vote of the district, this act shall take effect 90 days after the final adjournment of the legislature for all purposes and for the performance of all acts, including the calling and holding of the special elections authorized in section 18, necessary or permissible hereunder until the act be accepted in accordance with section 18 whereupon the act takes complete effect.

**Sec. 21. Rights conferred subject to provisions of law.** All the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 40 of the revised statutes, and all acts amendatory thereof or additional thereto.