

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

Legislative Document

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House of Representatives, April 16, 1947

Reported by Mr. Wight from the Committee on Public Utilities and
printed under Joint Rules.

HARVEY R. PEASE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT to Create the Penobscot Valley Water Commission.

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

Sec. 1. Penobscot Valley Water Commission, created. In order to develop new and sufficient sources of water supply for the communities within the Penobscot valley area in eastern Maine, the Penobscot Valley Water Commission hereinafter created and sometimes hereinafter referred to as the "commission," is hereby authorized and empowered to develop, construct, operate and maintain a central water system, sometimes hereinafter referred to as the "water supply system," for the purpose of supplying water to such communities within the Penobscot valley as may desire such water, including but not limited to the communities of Bangor, Brewer, Veazie, Orono and Orrington and to issue revenue bonds payable solely from annual income to pay the costs of such construction.

Sec. 2. Bonds not to be pledges of communities. Revenue bonds issued under the provisions of this act shall not be deemed to be a debt of the state of Maine, of any political subdivision thereof, or of any district, or a pledge of the faith and the credit of the state, of any such political subdivision, or of any district, but such bonds shall be payable exclusively from the income accruing to the Penobscot Valley Water Commission.

Sec. 3. Powers. (a) There is hereby created a commission to be known as the "Penobscot Valley Water Commission," which shall be a body both corporate and politic in the state of Maine and shall have powers (1) to sue and be sued; (2) to have a seal and to alter the same at pleasure; (3) to adopt from time to time and amend by-laws covering its procedure; (4) to construct, maintain and operate a central water supply system; (5) to acquire, hold and dispose of personal property for its purposes; (6) to acquire in the name of the commission by purchase, condemnation, lease or otherwise, real property and rights or easements therein deemed by it necessary or desirable for its purpose and to use such property; (7) to contract in the name of the commission with cities, towns, municipalities, communities, and corporations, for water supply to be furnished to said cities, towns, municipalities, communities and corporations by the commission; (8) to acquire any such real property by the exercise of the power of condemnation provided by law; (9) to charge and collect fees for the use of the services made available subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided; (10) to make contracts with the United States of America or any instrumentality or agency of the United States of America, the state of Maine or any of its agencies or instrumentalities, municipalities, public corporations or body existing therein, private corporations, partnerships, associations and individuals; (11) to accept grants and the cooperation of the United States of America or any agency thereof in the construction, maintenance, reconstruction, operation and financing of the water supply system; and to do any and all things necessary in order to avail itself of such aid and cooperation; (12) to employ such assistants, financial advisors, agents and servants, engineering, architectural and construction experts and inspectors, attorneys and such other employees as it shall deem necessary or desirable for its purpose; (13) to exercise any of its powers in the public domain of the United States of America unless the exercise of such powers is not permitted by the laws of the United States of America; (14) to borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the commission, and to secure the payment of such obligations or any part thereof by pledge of any part of the revenue of the water supply system; and (15) to do all other lawful things necessary and incidental to the foregoing powers.

(b) The commission shall consist of five members who shall be appointed by the governor by and with the advice and consent of the council. The appointed members shall be residents of Penobscot county and shall

have been qualified electors therein for a period of at least one year next preceding their appointment, and not more than two such members shall, when appointed, be residents of the same city or town. The members of the commission first appointed shall continue in office for terms of one, two, three, four and five years, respectively, the term of each such member to be designated by the governor, and until their respective successors shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of five years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and any member of the commission shall be eligible for reappointment. The members of the commission shall serve without compensation. Immediately after such appointments the members of the commission shall enter upon their duties. The governor shall name one of the appointed members as chairman of the commission. The commission shall elect a secretary and treasurer who need not be a member of the commission and shall elect an executive director or general manager, who is not a member of the commission. Two-thirds of the members of the commission will constitute a quorum and the vote of three members shall be necessary for any action taken by the commission. No vacancy in the commission shall impair the right of a quorum of the members to exercise all the rights and perform all the duties of the commission. Before the issuance of any revenue bonds under the provisions of this act, each appointed member of the commission shall execute a bond in the penalty of \$25,000, and the secretary and treasurer shall execute a bond in the penalty of \$50,000, each such bond to be approved by the attorney-general and to be conditioned upon the faithful performance of the duties of his office, which bond shall be filed in the office of the state auditor. Each member of the commission shall be reimbursed for necessary expenses incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act and no liability or obligation shall be incurred hereunder beyond the extent to which money shall have been provided under the authority of this act.

Sec. 4. Eminent domain. (a) Whenever a reasonable price cannot be agreed upon for the purchase or lease of real property found necessary for the purposes of the commission or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the commission is hereby authorized and empowered to acquire by condemnation any such real property whether wholly or partly constructed or interest or interests therein and any lands, rights, easements, franchises and other property deemed necessary or convenient for the construction or the

efficient operation of the water supply system hereinafter provided. In such event the commission shall cause the land to be taken, to be surveyed and described and a plan thereof and said description to be recorded in the registry of deeds for the county or registry district where the same is located, and notice thereof shall be given in some newspaper published wholly or in part in said county or if no such newspaper exists, then in a newspaper of state-wide circulation. The county commissioners of the county wherein such property or land is located shall constitute a board of appraisers which shall, on petition of the commission or interested parties, meet and ascertain and determine the value of the property or land to be taken, make a correct return of their doings, signed by them, accompanied by an accurate plan of the land and state in their return the names of the persons to whom damages are allowed, and the amount allowed to each. The county commissioners shall give reasonable notice to interested parties of the time and place of their meeting and afford interested parties an opportunity to be heard. Their return shall be filed with the clerk of the county commissioners and remain in the custody of their clerk for inspection. Any interested party aggrieved by their determination of damages may appeal from their determination to the superior court of the county at the next regular term of said court following the date of filing of their return with their said clerk. If no such appeal is made, the proceedings shall be closed and become effectual; all claims for damages not allowed by them be forever barred; and all damages allowed by them be final. If an appeal be taken at the time and in the manner provided herein, the court shall determine the damages by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the 1st term of court shall file a complaint setting forth substantially the facts, upon which the case shall be tried like other cases. The party prevailing recovers costs to be allowed and taxed by the court, except that they shall not be recovered by the party claiming damages, but by the other party, if on such appeal by either party, said claimant fails to recover a greater sum as damages than was allowed to him by the county commissioners. The committee of reference shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. From the action of the court or on exceptions, or from any judgment after a jury trial, an appeal may be taken by any party to the supreme judicial court.

(b) Title to any property condemned by the commission shall be taken in the name of the commission. The commission shall be under no obligation to pay for any property condemned or any costs incidental to any condemnation proceedings except from the sums provided by this act; and in any condemnation proceedings, the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the commission and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against loss or damage by reason of the failure of the commission to accept and pay for the property; but such undertaking or security shall impose no liability upon the state of Maine, any political subdivision thereof, or any district except such as may be paid from the funds provided under the authority of this act.

(c) The commission and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this act and such entry shall not be deemed a trespass.

(d) All counties, cities, towns and other political subdivisions or other municipalities, corporations, quasi-municipal corporations and all public agencies and commissions of the state of Maine, notwithstanding any contrary provision of law, are hereby authorized and empowered (a) to contract with the commission for water, and (b) to lease, lend, contribute, grant or convey to the commission upon its request, upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions or other municipalities, corporations, quasi-municipal corporations may deem reasonable and fair and without the necessity for any advertisement or order of court or other action or formality other than the regular and formal action of the authorities concerned, any real or personal property which may be necessary or convenient to the effectuation of the authorized purposes of the commission, including real property already devoted to public use, and to raise and appropriate money for such purposes provided that if any such property is necessary or useful to a public utility in the performance of its duties to the public that the approval of the public utilities commission shall first be secured in accordance with the provisions of chapter 40 of the revised statutes of 1944 and all acts amendatory thereof and additional thereto.

(e) If reasonable and fair conditions for the acquisition of property or rights, as provided in the preceding subsection, can not be agreed upon the property may be taken under condemnation proceedings in the same

manner as provided in subsection (a) of this section, and in that event the county commissioners shall determine the reasonable and fair conditions for the acquisition of property or rights by the commission. The county commissioners of the county wherein such property or land is located shall constitute a board which shall on petition of the commission or interested parties meet and ascertain and determine the reasonable and fair conditions for the acquisition, make a correct return of their doings, signed by them, accompanied by an accurate plan of the land or situation involved. The county commissioners shall give reasonable notice to interested parties of the time and place of their meeting and afford interested parties an opportunity to be heard. Their return shall be filed with the clerk of the county commissioners and remain in the custody of their clerk for inspection. Any interested party aggrieved by their determination of reasonable and fair conditions may appeal from their determination to the superior court of the county at the next regular term of said court following the date of filing their return with their said clerk by at least 60 days. If no such appeal is made, the proceedings shall be closed, and become effectual. If an appeal be taken at the time and in the manner provided herein, the court shall determine the reasonable and fair conditions for the acquisition and make its decree therefor. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the first term of court shall file a complaint setting forth substantially the facts, upon which the case shall be heard by the court. From the action of the court or on exceptions, an appeal may be taken by any party to the supreme judicial court.

(f) Whenever the commission has instituted condemnation proceedings as hereinbefore provided and when the commission has tendered a bond or other security in sufficient sum to secure the owner or owners for damages and the same has been accepted or if the acceptance has been refused and the same has been filed and approved by the court having jurisdiction over such condemnation proceeding, the commission shall have the right to immediate possession of the property which is the subject matter of the condemnation proceedings and may enter thereon in the name of the commission.

(g) Nothing herein contained shall be construed as authorizing said commission to take by right of eminent domain any of the property or facilities of any public service corporation or district used or acquired for future use by the owner thereof in the performance of public duty, unless expressly authorized thereto herein or by subsequent act of the legislature. Except that it may take and divert water from Hatcase pond, Mountain

pond, Fitts pond, Burnt pond, Floods pond and Beech Hill pond in the counties of Penobscot and Hancock, as the case may be, or any of them, from Schoodic lake in the county of Piscataquis or from Branch lake in the county of Hancock.

Sec. 5. Procedure if public utility must be crossed. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to the place, manner and conditions of the crossing within 50 days after such consent is requested by said commission, the public utilities commission shall determine the place, manner and conditions of such crossing; and all work in 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 commission.

Sec. 6. Issuance of bonds. The commission is hereby authorized to provide by resolution from time to time for the issuance of bonds for the purpose of paying construction costs, interest payments becoming due during the period of construction, organizational expenses, costs of constructing the water supply system, water mains, conduits, pipes, reservoirs, dams, pumping stations, buildings, locations and equipment. The bonds of the commission shall not constitute a debt of the state or any agency or political subdivision thereof, but shall be payable solely from the revenue from the said water supply system. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable. In case any of the members of the commission whose signatures appear on the bonds or coupons shall cease to be such members before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such members had remained in office until such delivery. The commission may in the resolution authorizing prospective issues provide as to such bonds:

- (1) The manner of executing the bonds and coupons;
- (2) The form and denomination thereof;
- (3) Maturity dates not more than 50 years from the date or dates of issuance;
- (4) The interest rates thereon;
- (5) For redemption prior to maturity and the premium payable therefor;
- (6) The place or places for the payment of interest and principal;
- (7) For registration if the commission deems such to be desirable;
- (8) For the pledge of all or any of the revenue for securing payment;

- (9) For the replacement of lost, destroyed or mutilated bonds;
- (10) The setting aside of reserve and sinking funds and the regulation and disposition thereof;
- (11) For limitation on the issuance of additional bonds;
- (12) For the procedure, if any, by which the contract with the bondholder may be abrogated or amended;
- (13) For the manner of sale and purchase thereof;
- (14) For covenants against pledging of any of the revenue of the water supply system;
- (15) For covenants to fix and establish such prices, rates and charges for the services made available in connection with said water supply system so as to provide at all times funds which will be sufficient;
 - (a) To pay all costs of operation and maintenance of said water supply system, its pipes, conduits, pumping stations, mains, reservoirs, dams and buildings, together with the necessary repairs thereto;
 - (b) To meet and pay the interest and principal of all of such bonds as they severally become due and payable;
 - (c) For the creating of such reserves for the interest and principal of all such bonds and for the meeting of contingencies and the operation and maintenance of said water supply system, its pipes, conduits, pumping stations, mains, reservoirs, dams and buildings as the commission shall determine;
- (16) For such other covenants as to such prices, rates and charges as the commission shall determine;
- (17) For covenants as to the rights, liability, powers and duties arising upon the breach by the commission of any covenant, condition or obligation;
- (18) For covenants as to the bonds to be issued and as to the issuance of said bonds in escrow and otherwise and as to the use and disposition of the proceeds thereof;
- (19) For covenants as to the use of its property and the maintenance and replacement thereof and the insurance to be carried thereon and the use and disposition of insurance money;
- (20) For limitations upon the exercise of the powers conferred upon the commission by this act;
- (21) For the issuance of such bonds in series thereof;

(22) The performance by the commission of any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or in the absolute discretion of the commission as will tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein.

Sec. 7. Application of proceeds of bonds. All moneys received from any bonds issued pursuant to this act shall be applied solely (1) to the payment of the cost of the water supply system, including expenses, organizational or otherwise or capital expenditures therefor or (2) to the maintenance thereof; and there shall be and hereby is created and granted a lien upon such moneys until so applied in favor of holders of such bonds or the trustee hereinafter provided for in respect of such bonds.

Sec. 8. Bonds; how secured. In the discretion of the commission such bonds may be secured by a trust indenture by and between the commission and a corporate trustee which may be any trust company or bank having the powers of a trust company, within or outside of the state of Maine. Such trust indenture may pledge or assign revenue to be received but shall not convey or mortgage the water supply system or any part thereof. Either the resolution providing for the issuance of such bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition of properties and the construction, maintenance, operation, repair and insurance of the water supply system, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as a depository of the proceeds of the bonds or revenues and to furnish such indemnity bonds or to pledge such securities as may be required by the commission. Such indenture may set forth the rights and the remedies of the bondholders and of the trustee and may restrict the individual right of action of the bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the commission may deem reasonable and proper for the security of bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of the water supply system.

Sec. 9. Exemption from taxes. The Penobscot Valley Water Commission herein created, being a non-profit organization and the accomplishment by the commission of its authorized purpose as set forth in this act

being for the benefit of the people of the state of Maine and their prosperity, in which accomplishment the commission will be performing essential governmental functions, the commission shall not be required to pay any taxes or assessments on any property acquired or accepted by it for the purposes provided in this act, nor shall the commission be required to pay any tax upon its income except as may be required by the laws of the United States of America, and the bonds or other securities and obligations issued by the commission, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within the state of Maine.

Sec. 10. Refunding bonds. The commission is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds issued under the provisions of this act and then outstanding. The issuance of such bonds, the maturities and other details thereof, the rights of holders thereof and the duties of the commission in respect to the same, shall be governed by the foregoing provisions of this act insofar as the same may be applicable, and by the following provisions:

(a) No refunding bonds shall be delivered unless delivered in exchange for revenue bonds to be refunded thereby, except in the amount necessary for the payment of matured or redeemable revenue bonds or bonds maturing or redeemable within 3 months, including any redemption premium thereon.

(b) No refunding bonds shall be issued unless issued to refund bonds which have matured or will mature within 3 months or unless the interest rate of the refunding bonds shall be at least $\frac{1}{4}$ of 1% less than the interest rate borne by the bonds to be refunded.

Sec. 11. Maintenance of the water supply system.

(a) The water supply system when finally completed, or any integral operating unit thereof, shall be maintained and repaired by and under the control of the commission and, at the discretion of the commission, the services of the public utilities commission of the state of Maine, so far as the same are available or expedient, may be utilized for this purpose. Such water supply system shall be operated by such force of supervisors and other operating employees as the commission may in its discretion employ.

(b) The commission is hereby authorized, subject to the approval of the public utilities commission, to fix and to revise from time to time rates and charges for the water delivered to the various communities, and

to charge and collect the same. Such rates and charges shall be so fixed and adjusted as to provide a fund at least sufficient with other revenues of the commission, if any, to pay (1) the cost of maintaining, repairing and operating the water supply system; and (2) the bonds and the interest thereon and all sinking fund requirements and other requirements provided by the resolution authorizing the issuance of the bonds or by the trust indenture, as the same shall become due.

(c) The rates and charges and all other revenues derived from the water supply system, except such part thereof as may be required to pay the cost of constructing, maintaining, repairing and operating the water supply system and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be set aside at such regular intervals as may be provided in such resolution or in such trust indenture, in a sinking fund which is pledged to, and charged with the payment of:

- (1) the interest upon such bonds as such interest shall fall due,
- (2) the principal of the bonds as the same shall fall due,
- (3) the necessary fiscal agency charges for paying principal and interest and
- (4) any premiums upon bonds retired by call or purchase as herein provided.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of such bonds or in the trust indenture, but except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all bonds issued hereunder without distinction or priority of one over another.

(d) The commission is hereby authorized and empowered to enter into contracts with cities, towns, water districts and other municipal and quasi-municipal corporations, and such cities, towns, water districts and other municipal and quasi-municipal corporations are authorized and empowered on their part through their municipal officers, trustees, water boards, or other proper officers, to enter into contracts with the commission for the supply of water by the commission upon such terms and conditions and for such periods as may be mutually agreeable, subject however, to the approval of the Public Utilities Commission as this act provides.

Sec. 12. Provisions in case of default on bonds. In the event that the commission shall make default in the payment of principal or interest on any of the bonds after the same shall fall due and such default shall continue for a period of 60 days or default in any agreement with the bondholders or the trustee under a trust indenture, the holders of 25% in aggregate principal amounts of the bonds then outstanding by instrument filed in the office of the secretary of state duly acknowledged may appoint a trustee to represent the bondholders for the purpose herein provided, except to the extent the rights herein given may be restricted by the resolution passed before the issuance of the bonds or by the trust indenture. Such trustee may upon the written request of the holders of 25% in principal amount of the bonds then outstanding:

- (1) by mandamus or other suit, action or proceeding at law or in equity enforce the rights of the bondholders;
- (2) bring suit upon the bonds;
- (3) enjoin any acts or other things which may be unlawful or in violation of the rights of the bondholders;
- (4) by action or suit in equity require the commission to account as if it were trustee of an expressed trust for the bondholders. Such trustee shall be entitled as a right to the appointment of a receiver who may, to the extent that the commission could itself do, enter and take possession of the facilities of the commission or any part thereof, the revenue or receipts from which are or may be applicable to the payment of the bonds so in default, and operate and maintain the same and collect and receive all revenue thereafter arising therefrom in the same manner as the commission might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and the receiver, if any; and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived from the water supply system, the revenues and receipts from which are or may be applicable to the payment of the bonds so in default. Such trustees shall in addition to the foregoing have and possess all the powers necessary and appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights. In addition to other rights and limitations any bondholder shall have the right by mandamus or other suit, action or proceeding in law or in equity to enforce his rights against the commis-

sion including the right to require the commission to carry out any agreement or covenant and to perform its duties under this act.

Sec. 13. Interim certificates or temporary bonds. Prior to the issuance of the bonds hereunder the commission may issue interim certificates or temporary bonds in such manner and with such conditions as the commission may determine to be exchanged for such bonds when issued.

Sec. 14. Trust funds. All monies received by the commission pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this act.

Sec. 15. Saving clause. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 16. Governmental function. It is hereby declared that the purposes of this act are public and that the commission shall be regarded as performing a governmental function in the carrying out of the provisions of the act, and shall be subject to the jurisdiction of the Public Utilities Commission under the provisions of chapter 40 of the revised statutes of 1944 and all acts amendatory thereof and additional thereto.

Sec. 17. Income from bonds; tax exempt. The income from bonds issued by the commission shall be exempt from taxation.

Sec. 18. Act void unless property acquired. If said commission shall fail to purchase or to file its petition to take by eminent domain as in this act provided, on or before two years from the effective date of this act, any properties, franchises, rights and privileges to be used or usable in connection with the water supply system, then this act shall become null and void.

Sec. 19. Local referendum for cities and towns. No city or town shall have authority to participate under this act unless and until such city or town shall have voted by local referendum in the manner hereinafter provided in favor of such participation. Such local referendum shall be held as follows:

(a) In the case of cities, by voting at an election specially called, advertised and held for the purpose by the municipal officers of such city, as municipal elections are called, advertised and held, at which election the voters shall indicate on a printed ballot by a cross placed against the words "Yes" or "No" their approval or disapproval of such par-

ticipation, which shall be presented on the ballot in the form of a question, reading substantially as follows: "Do the voters of this city desire to participate in a plan for a new water supply as permitted under an act creating the Penobscot Valley Water Commission?"

(b) In the case of towns, by a vote taken at any regular or special town meeting, provided there shall be included in the warrant for such meeting an article setting forth the question substantially in the following form: "To see if the voters are in favor of participating in a plan for a new water supply as permitted under an act to create the Penobscot Valley Water Commission."

(c) The results of such local referendum so held in cities or towns shall be declared by the municipal officers of said cities or towns and due certificate thereof shall be filed by the city clerk or town clerk, as the case may be, with the secretary of state, and such certificate shall be conclusive evidence of the results of each such referendum. Water districts created under enactments requiring acceptance by local referendum shall require no further referendum vote for authority to participate hereunder.