

HOUSE No. 4399

Substituted by the House, on motion of Mr. Speliotis of Danvers, for a bill with the same title (House, No. 4159). July 13, 2020.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act authorizing the town of Nantucket to supply itself and its inhabitants with water.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 27 of the acts of 1880 is hereby repealed.

2 SECTION 2. Chapter 307 of the acts of 1925 is hereby repealed.

3 SECTION 3. Chapter 197 of the acts of 1928 is hereby repealed.

4 SECTION 4. (a) The town of Nantucket may: (i) supply itself and the inhabitants thereof
5 with water for the extinguishment of fires, domestic and other purposes, (ii) establish fountains
6 and hydrants, relocate or discontinue the same and (iii) regulate the use of such water and fix and
7 collect rates to be paid for the use of same.

8 (b) The town, for the purposes aforesaid, may: (i) acquire by purchase or take by eminent
9 domain pursuant to chapter 79 of the General Laws the entire water rights, estates, franchises and
10 privileges of any corporation supplying water to its inhabitants and thereby become entitled to all
11 its rights and privileges and subject to all its duties and liabilities; (ii) lease, take by eminent
12 domain pursuant to said chapter 79 or acquire by purchase or otherwise, and hold the waters, or

13 any portion thereof, of any pond, brook, spring, stream or any ground water sources within its
14 limits, not already appropriated for purposes of public water supply, and any water or flowage
15 rights connected therewith; provided, that the amount of water which may be taken shall from
16 time to time be determined by vote of the town; (iii) take by eminent domain pursuant to said
17 chapter 79 or acquire by purchase or otherwise, and hold all lands, rights of way and other
18 easements necessary for collecting, storing, holding, purifying and treating such water and
19 protecting and preserving the purity thereof and for conveying the same to any part of said town;
20 provided, that no source of water supply and no lands necessary for protecting and preserving the
21 purity and quality of the water shall be taken or used without first obtaining the advice and
22 approval of the department of environmental protection, and that the location and arrangement of
23 all dams, reservoirs, wells or filter galleries, filtration and pumping plants or other works
24 necessary in carrying out this act shall be subject to the approval of said department. The town
25 may: (i) construct, erect and maintain on the lands acquired and held pursuant to this act proper
26 dams, reservoirs, pumping and filtration plants, buildings, standpipes, tanks, fixtures and other
27 structures, including purification and treatment works, the construction and maintenance of
28 which shall be subject to the approval of the department of environmental protection, and (ii)
29 make excavations, procure and operate machinery, and provide such other means and appliances
30 and do such other things as may be necessary for the establishment and maintenance of complete
31 and effective water works; and for that purpose may construct wells and reservoirs, establish
32 pumping works and lay down and maintain aqueducts, conduits, pipes and other works, under or
33 over any lands, water courses, railroads, railways and public or other ways and along any such
34 way in the town in such manner as not unnecessarily to obstruct the same; and for the purpose of
35 constructing, laying, maintaining, operating and repairing such conduits, pipes and other works,

36 and for all other proper purposes of this act, the town may dig up or raise and embank any such
37 lands, highways or other ways in such manner as to cause the least hindrance to public travel
38 thereon. The town shall not enter upon, construct or lay any conduits, pipes or other works
39 within the location of any railroad corporation except at such time and in such manner as it may
40 agree upon with such corporation or in case of failure so to agree as may be approved by the
41 department of public utilities. The town may enter upon any lands for the purpose of making
42 surveys, test pits and borings, and may take or otherwise acquire the right to occupy temporarily
43 any lands necessary for the construction of any work or for any other purpose authorized by this
44 act.

45 (c) The land, water rights and other property taken or acquired pursuant to this act, and all
46 works, buildings and other structures erected or constructed pursuant to this act, shall be
47 managed, improved and controlled by the board of water commissioners hereinafter provided for
48 in subsection (h), in such manner as it shall deem for the best interest of the town.

49 (d) Any person or corporation injured in his or its property by any action of the town or
50 said board pursuant to this act may recover damages from the town pursuant to said chapter 79;
51 provided, however, that the right to damages for the taking of any water, water right, or any
52 injury thereto, shall not vest until the water is actually withdrawn or diverted by the town under
53 authority of this act.

54 (e) The town may, for the purpose of paying the necessary expenses and liabilities
55 incurred or to be incurred pursuant to this act, issue bonds or notes in accordance with section 8
56 of chapter 44 of the General Laws.

57 (f) The town shall, at the time of authorizing said loan, provide for the payment thereof
58 in accordance with the provisions of subsection (e). When a vote to that effect has been passed, a
59 sum which, with the income derived from the water rates, will be sufficient to pay the annual
60 expense of operating the water works, and the interest as it accrues on the bonds or notes issued
61 as aforesaid, and to make such payments on the principal as may be required pursuant to this act,
62 shall without further vote be assessed by the town annually thereafter in the same manner as
63 other taxes, until the debt incurred by the loan is extinguished.

64 (g) Whoever willfully or wantonly corrupts, pollutes or diverts any of the waters taken or
65 held under this act, or injures any structure, work or other property owned, held or used by the
66 town under the authority and for the purposes of this act, shall forfeit and pay to said town 3
67 times the amount of damages assessed therefore, to be recovered in an action of tort; and upon
68 conviction of any of the above willful or wanton acts shall be punished by a fine of not more
69 than \$300 or by imprisonment for not more than 1 year, or both.

70 (h) All water operations of said town shall be consolidated in department of the town to
71 be known as the water department. All the authority granted to the town by this act, except
72 subsections (e) and (f), and not otherwise specially provided for, shall be vested in a 5-member
73 board of water commissioners, hereinafter referred to as the board. The board shall have
74 exclusive charge and control of the water department and water system of the town; provided,
75 however, that the board shall be subject to all lawful by-laws and instructions, rules and
76 regulations as the town may impose by its vote. A majority of the board shall constitute a
77 quorum for the transaction of business. Any vacancy occurring in the board shall be filled at the
78 next annual town election for the remainder of the unexpired term and may be filled temporarily
79 by the board of selectmen until the next annual election, in accordance with the charter of the

80 town of Nantucket as it may be amended. The commissioners shall serve for 3-year overlapping
81 terms, so arranged that the terms of not more than 2 commissioners shall expire each year.

82 (i) The board shall fix just and equitable prices and rates for the use of water, and shall
83 prescribe the time and manner of payment of such prices and rates. The income of the water
84 works shall be applied to defraying all operating expenses, interest charges and payments on the
85 principal as they accrue upon any bonds or notes issued pursuant to this act. During any period
86 that the water department is not operated under generally accepted accounting principles
87 pursuant to section 53F1/2 of said chapter 44, if there is a net surplus remaining after providing
88 for the aforesaid charges it shall, subject to appropriation by the town, be used for such new
89 construction as the water commissioners may recommend or be reserved by the town for future
90 new construction, and if a surplus remains after appropriation or reservation for such new
91 construction or in the event such surplus is not so appropriated and reserved, the water rates shall
92 be reduced proportionately. All authority vested in the board by the foregoing provisions of this
93 subsection shall be subject to the provisions of subsection (h) with respect to the town's authority
94 to adopt appropriate by-laws, rules, instructions and regulations. The board shall annually, and
95 as often as the town may require, render a report upon the condition of the works under its
96 charge and an account of its doings, including an account of receipts and expenditures.

97 SECTION 5. The town of Nantucket shall be the lawful successor of the Siasconset water
98 district and the Wannacomet Water Company in every respect. All property, both real and
99 personal, including funds, records, furnishings and equipment whatsoever in the custody of said
100 district and company shall be transferred by operation of law to the town, and no contracts or
101 liabilities of the Siasconset water district or Wannacomet Water Company in force on the

102 effective date of this act shall be affected by the dissolution and abolition of the said district or
103 company, except as provided in section 10.

104 SECTION 6. The incumbent general manager of the Wannacomet Water Company
105 holding office as of the effective date of this act shall serve as the director of the water
106 department of the town of Nantucket until the natural expiration of his or her current
107 appointment, or his or her sooner resignation, retirement or removal.

108 SECTION 7. The enterprise funds previously established by vote of the town pursuant to
109 section 53F1/2 of chapter 44 of the General Laws and referred to as the Siasconset Water
110 Enterprise Fund and the Wannacomet Water Enterprise Fund, to the extent they are in existence
111 as of the effective date of this act, shall be consolidated into a single enterprise fund known as
112 the Nantucket Water Department Enterprise Fund, which shall be subject to said section 53F1/2
113 of said chapter 44.

114 SECTION 8. Any properly-adopted rules and regulations of the boards of water
115 commissioners created pursuant to sections 8 and 8A of chapter 307 of the acts of 1925 in effect
116 upon the effective date of this act, shall remain in full force and effect until such time as they are
117 amended or abolished by the board established pursuant to subsection (h) of section 4

118 SECTION 9. Upon the effective date of this act, the then-applicable memorandum of
119 agreement between the Nantucket water commission and the Siasconset water district shall be
120 rendered void, and the parties shall be relieved of their obligations under said memorandum of
121 agreement, except to the extent that any payments are outstanding for services rendered prior to
122 the effective date of this act.

123 SECTION 10. All personnel of the water department created pursuant to subsection (h) of
124 section 4 shall be employees of the town of Nantucket, and shall be appointed by the board
125 created under said subsection (h) of said section 4, in accordance with and subject to the
126 requirements of sections 4.5-4.9 of the charter of the town of Nantucket. Said employees shall be
127 subject to any applicable by-laws, and personnel policies and procedures of the town, unless and
128 only to the extent that such by-laws and personnel policies and procedures have been superseded
129 by any valid collective bargaining agreement, where applicable. Nothing herein shall be
130 construed to alter or amend the employment status of any existing water department employee,
131 employed as of the effective date of this act, except as provided in section 6.

132 SECTION 11. On the effective date of this act, the members of the board of water
133 commissioners established by section 8A of chapter 307 of the acts of 1925, previously known as
134 the Nantucket water commissioners, shall become the first members of the 5-member board of
135 water commissioners created pursuant to subsection (h) of section 4. Said commissioners shall
136 serve for the remainder of their elected terms or their sooner vacating of office. Thereafter, the
137 offices shall be filled in accordance with said subsection (h) of said section 4. Two additional
138 commissioners shall be elected at the first annual town election occurring no less than 64 days
139 after the passage of this act, 1 for a 2-year term and 1 for a 3-year term. If the 2 additional
140 positions would remain vacant for more than 4 months, the board of selectmen may, in its
141 discretion, make temporary appointments to fill the vacancies until the annual election at which
142 the offices may legally appear on the ballot. Thereafter, all elections and temporary appointments
143 to the board shall be made in accordance with said subsection (h) of said section 4.

144 SECTION 12. This act shall take effect upon its passage.