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 Alassachusetts

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:

- 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 Chapter 27 of the acts of 1880 is hereby repealed.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 Chapter 307 of the acts of 1925 is hereby repealed.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 Chapter 197 of the acts of 1928 is hereby repealed.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
- 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
- privileges of any corporation supplying water to its inhabitants and thereby become entitled to all
- its rights and privileges and subject to all its duties and liabilities; (ii) lease, take by eminent
- domain pursuant to said chapter 79 or acquire by purchase or otherwise, and hold the waters, or

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

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

- (c) The land, water rights and other property taken or acquired pursuant to this act, and all works, buildings and other structures erected or constructed pursuant to this act, shall be managed, improved and controlled by the board of water commissioners hereinafter provided for in subsection (h), in such manner as it shall deem for the best interest of the town.
- (d) Any person or corporation injured in his or its property by any action of the town or said board pursuant to this act may recover damages from the town pursuant to said chapter 79; provided, however, that the right to damages for the taking of any water, water right, or any injury thereto, shall not vest until the water is actually withdrawn or diverted by the town under authority of this act.
- (e) The town may, for the purpose of paying the necessary expenses and liabilities incurred or to be incurred pursuant to this act, issue bonds or notes in accordance with section 8 of chapter 44 of the General Laws.

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

- (g) Whoever willfully or wantonly corrupts, pollutes or diverts any of the waters taken or held under this act, or injures any structure, work or other property owned, held or used by the town under the authority and for the purposes of this act, shall forfeit and pay to said town 3 times the amount of damages assessed therefore, to be recovered in an action of tort; and upon conviction of any of the above willful or wanton acts shall be punished by a fine of not more than \$300 or by imprisonment for not more than 1 year, or both.
- (h) All water operations of said town shall be consolidated in department of the town to be known as the water department. All the authority granted to the town by this act, except subsections (e) and (f), and not otherwise specially provided for, shall be vested in a 5-member board of water commissioners, hereinafter referred to as the board. The board shall have exclusive charge and control of the water department and water system of the town; provided, however, that the board shall be subject to all lawful by-laws and instructions, rules and regulations as the town may impose by its vote. A majority of the board shall constitute a quorum for the transaction of business. Any vacancy occurring in the board shall be filled at the next annual town election for the remainder of the unexpired term and may be filled temporarily by the board of selectmen until the next annual election, in accordance with the charter of the

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

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

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

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

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

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

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

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

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

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

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