

Agents not to be pecuniarily interested in the publication of text books, etc.

not exceed three thousand dollars annually. Such agents shall not be pecuniarily interested, directly or indirectly, in the publication or sale of any text book, school book or article of school supply used in the public schools of this Commonwealth.

Expenses.

SECTION 2. The incidental expenses of the board and the travelling and other necessary expenses of the members thereof, incurred in the performance of their official duties, shall be paid by the Commonwealth.

Repeal.

SECTION 3. Sections three, four, nine, twelve, thirteen, fourteen, fifteen and sixteen of chapter thirty-nine of the Revised Laws are hereby repealed.

SECTION 4. This act shall take effect upon its passage.

*Approved April 13, 1904.*

*Chap. 235*

AN ACT TO INCORPORATE THE ASPINWALL WATER COMPANY.

*Be it enacted, etc., as follows:*

Aspinwall Water Company incorporated.

SECTION 1. DeWitt Bruce, Thomas Baker, Thomas Briant, Bridget M. Mahanna, Frank C. Hagyard, Michael E. Mahanna, James Whyte, Richard A. Stanley and Richard O'Brien, their associates and successors, are hereby made a corporation by the name of the Aspinwall Water Company, for the purpose of furnishing with pure water for the extinguishment of fires and for domestic and other purposes, with all the powers and privileges and subject to all the duties, restrictions and liabilities set forth in all general laws now or hereafter in force relating to such corporations, the inhabitants of that part of the town of Lenox lying northerly of the following described line, which crosses said town in an easterly and westerly direction, namely:—Beginning at a point in the easterly boundary of the town of Lenox which is in range due east with a stone monument on the easterly side of the main road from Lenox to Pittsfield and which marks the northern boundary of the Lenox fire district; thence due west to said stone monument; thence south, eighty degrees west, six hundred and forty-nine feet; thence south, seventy-one degrees, thirty minutes west, seven hundred and forty-six feet; thence north, twenty-two degrees west, three hundred sixty-four and seven tenths feet, to cut stone bounds; thence north, no degrees, thirty-three minutes east, ten hundred twenty-five and one tenth feet; thence north, one degree, fifteen minutes east, four hundred sixty-three and

The inhabitants of certain part of Lenox may be furnished with water.

eight tenths feet, to a stone monument; thence south, eighty-nine degrees, forty-four minutes west, seven hundred and thirty feet to the northeasterly line of Cliffwood street: thence along said line of said street, north, nineteen degrees, forty-two minutes west, one hundred fifty-five and eight tenths feet; thence north, seventy degrees, forty-two minutes west, sixty-seven and three tenths feet; thence north, thirty-eight degrees, thirty minutes east, two hundred and eighty-nine feet; thence north, twelve degrees, fifteen minutes east, one hundred ninety-nine and seven tenths feet; thence north, fifteen degrees, twelve minutes west, one hundred and eighty feet; thence north, seventy-six degrees, thirty minutes west, six hundred sixty-five and five tenths feet: thence south, no degrees, forty-four minutes west, four hundred and eighty-four feet to the northerly line of the road leading from Lenox to Richmond; thence westerly along said line of said road fifteen hundred and ninety-nine feet; thence north, no degrees, thirty minutes east, four hundred and ninety-one feet to a stone monument; thence north, eighty-eight degrees, forty-five minutes west, eleven hundred and twenty-eight feet; thence south, seventy-three degrees west, one hundred and fifty-eight and four tenths feet; thence south, fifty degrees west, one hundred twelve and two tenths feet; thence south, thirty-six degrees west, three hundred and nine tenths feet: thence south, twenty-three degrees, forty-five minutes west, one hundred and fifty-six feet to a stone monument on the northerly line of the road leading from Lenox village to Richmond; thence westerly along said northerly line of said road two hundred and fourteen feet to lands now of the Lenox Water Company; thence north, forty-two degrees east, one hundred and forty-six feet; thence north, twenty-two degrees west, one hundred and ninety-two feet; thence north, seventy-two degrees west, two hundred and seventy-five feet to the highway leading to Pittsfield and intersecting with the road from Lenox village to Richmond; thence along the easterly line of said road leading to Pittsfield, south, seven degrees east, one hundred and fifty-six feet to an intersection of roads; thence, crossing the highway, to the intersection of the southerly line of the highway leading from Lenox village to Richmond with the westerly line of the highway leading from Pittsfield to Curtisville, now Interlaken: thence from said intersection of said highways

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south, two degrees, six minutes east, six hundred forty-three and five tenths feet along the westerly line of the highway leading to Curtisville; thence south, eighty-seven degrees, forty-nine minutes west, two hundred eighty and five tenths feet; thence north, eighty-nine degrees, fifty-six minutes west, nine hundred seventy-three and five tenths feet to the southerly line of the road leading from Lenox to Richmond; and thence north, eighteen degrees, thirty minutes west, to the boundary line between Lenox and Richmond. The foregoing courses are referred to the true meridian.

May take certain waters, water rights, etc.

SECTION 2. Said company, for the purposes aforesaid, may lease, take, or acquire by purchase or otherwise, hold and convey through said part of the town of Lenox the water of the Yukon river and any and all of its tributaries in Lenox except that part of said river and its tributaries which lies south of the northern limit of ground on said stream now occupied by the Lenox Water Company, and the waters of any springs or other sources on the watershed of said river, with the water rights connected therewith, except that part which lies south of the northern limit of ground on said stream now used by the Lenox Water Company: *provided*, that no source of water supply for domestic purposes shall be taken under this act without the advice and approval of the state board of health, and that the location of all dams and reservoirs shall be subject to the approval of said board. Said Aspinwall Water Company may also take by purchase or otherwise and hold all lands, rights of way and easements in that part of the town of Lenox, northerly of the line described in section one, which are necessary for taking, holding, storing and improving such water and for conveying the same to and through that part of the town of Lenox which is northerly of the line described in section one of this act.

Proviso.

May take certain lands, rights of way, etc.

May construct structures, lay pipes, etc.

SECTION 3. Said company may construct on the lands thus taken or acquired proper dams, buildings, fixtures and other structures, and may do such other things as may be necessary for providing and maintaining complete and effective water works; and for that purpose may construct, lay and maintain aqueducts, conduits, pipes and other works, under or over any land, water sources, railroads, railways and public or other ways, and along any highway or other way in the town of Lenox, in such manner as not unnecessarily to obstruct the same; and for the purpose

of constructing, laying, maintaining and repairing such aqueducts, conduits, pipes and other works, and for all purposes of this act, said company may dig up, raise and embank any such lands, highways or other ways in such manner as to cause the least hindrance to public travel; but all things done upon any such ways shall be subject to the direction of the selectmen of said town.

SECTION 4. The said company shall, within sixty days after the taking of any lands, rights of way, water rights, water sources or easements as aforesaid, otherwise than by purchase, file and cause to be recorded in the registry of deeds for the middle district of the county of Berkshire a description thereof sufficiently accurate for identification, with a statement of the purpose for which the same were taken, signed by the president of the company. The recording shall operate as a taking of the real estate and rights and easements therein described.

Description of lands, etc., to be recorded.

SECTION 5. The said company shall pay all damages to property sustained by any person by the taking of any land, right of way, water source, water right or easement, or by any other thing done by said company under authority of this act. Any person sustaining damages as aforesaid who fails to agree with the company as to the amount thereof may have the same assessed and determined in the manner provided by law in the case of land taken for the laying out of highways, on application at any time within the period of one year after the taking of such land or other property, or the doing of other injury under authority of this act; but no such application shall be made after the expiration of such year. No application for assessment of damages shall be made for the taking of any water, water rights or for any injury thereto until the water is actually withdrawn or diverted by said company under authority of this act.

Damages.

SECTION 6. The said company may distribute the water through that part of the town of Lenox which is northerly of the line described in section one of this act; may establish, fix from time to time, and collect rates for the use of said water; and may make such contracts with the said town or with any fire district now or hereafter established therein, or with any individual or corporation, to supply water for the extinguishing of fire or for other purposes, as may be agreed upon with said town or with such fire district, individual or corporation.

Distribution of water, etc.

Real estate and capital stock.

SECTION 7. The said company may, for the purposes aforesaid, hold real estate not exceeding in value ten thousand dollars. Its capital stock shall not exceed fifty thousand dollars, and shall be divided into shares of one hundred dollars each. If it be necessary for the purposes of said company an increase of capital stock may be authorized by the commissioner of corporations, in the manner provided in sections thirty and thirty-one of chapter one hundred and nine of the Revised Laws. The company may issue bonds, and may secure the same by mortgage of its franchise and other property: *provided*, that the total amount of such bonds shall not exceed the amount of its capital stock actually paid in. Such bonds shall be payable at the expiration of periods not exceeding thirty years from the date of issue, shall bear interest payable semi-annually at a rate not exceeding five per cent per annum, and shall be denominated on the face thereof, Aspinwall Water Company Loan. They shall be issued only in such amounts as may from time to time, upon investigation by the commissioner of corporations, be deemed by him to be reasonably requisite for the purposes for which the company is established. A certificate setting forth the decision of the commissioner shall be filed in the office of the secretary of the Commonwealth before the bonds are issued, and the proceeds shall be applied only to such purposes as may be specified in the decision of the commissioner.

May issue mortgage bonds.

Proviso.

Certificate to be filed before bonds are issued, etc.

Penalty for corruption of water, etc.

SECTION 8. Whoever wilfully or wantonly corrupts, pollutes or diverts any water taken or held under this act or injures any structure, work or other property, owned, held or used by said company under authority of this act, shall forfeit and pay to said company three times the amount of damages assessed therefor, to be recovered in an action of tort; and upon conviction of any of the above wilful or wanton acts shall be punished by a fine not exceeding three hundred dollars, or by imprisonment for a term not exceeding one year.

Town of Lenox may take franchise, property, etc.

SECTION 9. The town of Lenox shall have the right at any time to take, by purchase or by exercise of the right of eminent domain, the franchise, property and all the rights and privileges of the said company on payment of the actual cost thereof, and without the payment of interest on any of the expenditures making up such actual cost. If the town shall so take said property, it may, in part payment therefor, assume any indebtedness of said com-

pany incurred in the construction or improvement of the property, by lawful issue of bonds secured by mortgage. The said company shall furnish to the town of Lenox, under oath, an itemized statement of the cost of the water supply system authorized under this act, together with a copy of the contracts made in providing and constructing said system and any extension thereof, and shall furnish to said town annually an itemized statement, under oath, of its receipts and expenditures, which statement shall be submitted by the selectmen to the citizens of the town at the annual town meeting. The authority to purchase or to take the franchise and property of the said company shall be exercised by said town only after the town has voted to purchase or take the same by a two thirds vote of the voters of the town present and voting thereon at a meeting legally called for that purpose. The taking, if by exercise of the right of eminent domain, shall be by filing in the registry of deeds for the middle district of the county of Berkshire a declaration of said taking, which shall include a certified copy of the article in the warrant under which the town acted and of the vote of the town thereon, showing that it was passed by a two thirds vote as herein required. In case the town and the corporation shall be unable to agree upon the actual cost of said property, the supreme judicial court shall, upon application of either party and notice to the other, appoint three commissioners, who shall determine the actual cost of said property and whose award, when accepted by the court, shall be final. Such actual cost shall be determined without including any interest on any expenditures made by said company.

Statement of receipts and expenditures, etc., to be furnished annually, etc.

Taking of franchise, etc., subject to a two thirds vote, etc.

In case of disagreement commissioners may be appointed to determine cost, etc.

SECTION 10. The selectmen of said town, upon application of the owner of any land, water or water rights taken under this act, shall require said company to give satisfactory security for the payment of all damages and costs which may be awarded to such owner for the land or other property so taken; but before requiring such security the selectmen shall, if application therefor is made by either party, make an estimate of the damages which may result from such taking, and the selectmen shall in like manner require further security, if at any time the security before required appears to them to have become insufficient; and all the right or authority of said company to enter upon or use such land or other property, except for

Company may be required to give satisfactory security for payment of damages, etc.

making surveys or tests of the soil, shall be suspended until it gives the security required.

When to take effect.

SECTION 11. This act shall take effect only upon its acceptance by a majority vote of the voters of the town voting thereon by ballot at a town meeting legally called for the purpose. If not so accepted when first submitted, it may be resubmitted at subsequent town meetings legally called for the purpose: *provided*, that it shall not be voted upon by the town more than once in any one year. Except as hereinbefore provided this act shall take effect upon its passage, but it shall become null and void unless work is begun under it within three years after the date of its passage.

Proviso.

*Approved April 13, 1904.*

*Chap. 236* AN ACT TO AUTHORIZE THE METROPOLITAN PARK COMMISSION TO REBUILD THE FINLAY MILL DAM ACROSS CHARLES RIVER AT NEWTON LOWER FALLS.

*Be it enacted, etc., as follows:*

The metropolitan park commission to reconstruct, etc., the Finlay dam.

SECTION 1. The metropolitan park commission, created by chapter four hundred and seven of the acts of the year eighteen hundred and ninety-three, is hereby authorized to repair, reconstruct and maintain at its present height the Finlay dam, so-called, across Charles river, at Washington street, Newton Lower Falls, Newton and Wellesley, at such point on land of the Commonwealth at or near its present site as the commission may deem best.

May make agreements in regard to water power, etc.

SECTION 2. For all purposes consistent with the powers and duties granted to and imposed upon said commission by said chapter four hundred and seven, and acts in amendment thereof and in addition thereto, the said commission is authorized to make agreements with any individual or corporation in regard to the repair, reconstruction or maintenance of said dam, and may make agreements in regard to, or may lease or grant such rights and privileges in, the water power created by the same as it may deem best.

Damages.

SECTION 3. Any owner of land or rights in land which is or may be overflowed or otherwise damaged by the erection or maintenance of the said dam may have his damages assessed by a jury or otherwise, upon a petition filed in the superior court for the county in which the land lies, and such damages so assessed shall be in full compensation for all damages hereafter to be caused by the main-