

SECTION 12. Nothing contained in this act shall prevent any municipality whose territory borders upon Boston brook from taking from said brook a supply of water for similar purposes whenever authorized by the general court so to do.

Not to affect right of certain municipalities.

SECTION 13. This act shall take effect upon its passage.

Approved May 26, 1913.

AN ACT TO PROVIDE AN ADDITIONAL WATER SUPPLY FOR THE CITIES OF SALEM AND BEVERLY.

Chap. 700

Be it enacted, etc., as follows:

SECTION 1. A board is hereby created which shall be known as the Salem and Beverly Water Supply Board and shall consist of three members. The director of the division of public works of the city of Salem and the chairman of the water board of the city of Beverly shall be members of said board, *ex officio*. The third member shall be appointed within sixty days after the passage of this act and every three years thereafter by the governor, with the advice and consent of the council, shall not be a resident of either of said cities, or hold property, or have a usual place of business therein. He shall be appointed for a term of three years, shall be chairman, and shall receive as compensation, so long as he shall continue to be a member of said board, such sum as the board shall fix, not exceeding three thousand dollars, and not less than one thousand dollars a year. The *ex officio* members shall receive no compensation. In case of a vacancy occurring in the office of the nonresident member, it shall be filled by appointment for the unexpired part of the term by the governor, with the advice and consent of the council. Said nonresident member may be removed at any time by the governor, with the consent of the council.

Salem and Beverly Water Supply Board, membership, terms, etc.

Vacancy.

SECTION 2. Said board may, from time to time, acting in behalf of said cities, make such contracts, to be jointly binding upon said cities, as it may deem necessary to carry out the purposes of this act, and may also from time to time appoint such agents, officers and servants as it may deem necessary for said purposes, and shall determine their duties and compensation, and may remove them at pleasure.

May make contracts, appoint agents, etc.

SECTION 3. All expenses, liabilities and damages incurred by said board in carrying out the purposes of this act shall be paid, except as hereinafter provided, by said cities in the proportion of one third by the city of Beverly and two thirds

Apportionment of expenses, etc.

by the city of Salem, and payment shall be made in the manner provided in section seventeen from the fund established by section sixteen hereof.

May take
waters of
Ipswich river,
etc.

Provisos.

May erect
structures,
lay pipes, etc.

SECTION 4. Subject to rights already granted or to be granted in the future by the general court and subject to such regulations and obligations as may hereafter be prescribed or imposed by the general court, or otherwise as provided in this section and the following sections, said board, acting in behalf of said cities, may, for the purpose of providing a further supply of water for the use of the city of Salem and its inhabitants and of the city of Beverly and its inhabitants, take, or acquire by purchase or otherwise, the waters of the Ipswich river and its tributaries, and the water rights connected therewith, diverting said waters at a point on said river in the town of Topsfield not more than three thousand feet easterly of the Newburyport turnpike: *provided*, that said board shall not divert or take any water from said river except when the daily flow of said river at or near the point from which the water is diverted or taken shall exceed twenty million gallons; and *provided*, that at such times said board may divert and take any part or all of the flow of said river in excess of twenty million gallons and no more, and *provided*, *further*, that said board shall exercise the right to divert or take the water above mentioned only during the months of December, January, February, March, April and May, and shall not divert or take from said river, in the aggregate, more than twenty-five hundred million gallons of water in any one calendar year; and said board, acting in behalf of said cities, may also take, or acquire by purchase or otherwise, all lands, rights of way and easements within the towns of Topsfield, Danvers, Wenham and Hamilton and the city of Beverly which may in its opinion be necessary for collecting, storing, holding, purifying and preserving the purity of the water taken under the authority of this act, or of the present water supply of said cities or any portion of said supply, and for conveying the same to any part or parts of said cities; and may erect on the lands acquired and held under the provisions of this act proper dams, reservoirs, pumping plants, filtration beds, buildings, fixtures and structures, and may make excavations, procure and operate machinery, and provide such other means and appliances, and do such other things, as may be necessary in its opinion for the establishment and maintenance of complete and

effective water supply works; and for that purpose may construct and lay conduits, pipes and other works under, through or over any lands, water courses, public works, railroads, railways, public or private ways, and along such ways as it may deem necessary or advisable for taking said water and adding the same to the present water supply of said cities; and for the purpose of constructing, laying, repairing, maintaining and operating such conduits, pipes and other works, and for all purposes of this act said board may enter upon and dig up any such lands or any of such ways in such manner as to cause no unreasonable hindrance to public travel, and all things done upon any such ways shall be done subject to the direction of the selectmen of the towns and the board of aldermen of the city, respectively, in which such ways are situated; but said board 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 said corporation; or, in case of failure so to agree, as may be approved by the board of railroad commissioners, *provided, however,* Provisos. that no lands necessary for storing the water or preserving the purity thereof shall be taken or used under the authority of this act, nor shall any dam, reservoir, filtering bed or other work for diverting, storing or improving the water be located or constructed without first obtaining the advice and approval of the state board of health, and *provided, further,* that in the manner of taking said water from said river and supplying the same to said cities the said water supply board shall conform to all such reasonable regulations as may be made from time to time by the state board of health not inconsistent herewith; and shall install such measuring and recording devices as may, in the opinion of the state board of health, be necessary accurately and permanently to record the amount of water flowing in said river beyond said point of taking during all periods of pumping; and the amount of water so diverted by said water supply board, and all records so taken shall be kept on file by the state board of health and shall be open at all times to inspection by the public.

SECTION 5. The water supply board shall, within ninety days after the taking of any lands, rights of way, water, water rights or easements as aforesaid, file and cause to be recorded in the registry of deeds for the county and district within

Description of property taken, to be recorded, etc.

which such lands or other property are situated a description thereof sufficiently accurate for identification, with a statement of the purposes for which the same are taken, signed by said water supply board; and the lands, rights of way, water, water rights or easements so described, as well as the works which the board is hereby authorized to construct, shall vest in said cities as tenants in common in the proportion named in section three hereof; and any land, water, water rights or easements purchased hereunder shall be conveyed to them as tenants in common in said proportion.

Damages.

SECTION 6. Said cities shall pay, in the manner herein provided, all damages to property sustained by any person or corporation by the taking of any land, right of way, water, water rights or easements, or by any other thing done by said water supply board under the authority of this act; and if said board and such person or corporation cannot agree as to the amount so to be paid, such person or corporation may, at any time within the period of two years after the taking of such land, right or other property or the doing of other injury under the authority of this act, file a petition against said cities jointly in the superior court for the county of Essex for a jury to determine said damages; and thereupon the same proceedings shall be had as are provided in case of an application to said court for a jury by persons dissatisfied with the damages awarded for land taken for laying out highways; but no such petition shall be filed after the expiration of said period of two years; but no assessment of damages shall be made for the taking of any water, water right, or for any injury thereto, and said period of two years shall not begin to run, until water is actually withdrawn or diverted by said board under the authority of this act. All damages and costs which may be agreed upon or recovered against said cities as aforesaid shall be paid in the proportion named in section three hereof.

Cities may offer specified sum as damages, etc.

SECTION 7. In every case of a petition for the assessment of damages, said cities may at any time file an offer in writing with the other papers in the case to pay to the petitioner a sum therein specified as damages, and if he does not accept the same within ten days after notice of said offer, and does not finally recover a sum greater than that offered, not including interest, the cities shall recover costs from said date, and the petitioner, if he recovers damages, shall be entitled to costs only to the date of the offer. All costs re-

covered by said cities shall be awarded to them in the proportion named in section three hereof.

SECTION 8. If said water supply board shall, under authority of this act, construct any reservoir in such manner as to flow any existing public way, it shall raise the way to such a grade as will make it reasonably safe and convenient for travel, or shall build in place of any part of said way so flowed another suitable way which shall thereafter be a public way, with all necessary fences and culverts, in such manner as shall be agreed upon by said board and the selectmen of the town, or the board of aldermen of the city, in which such public way is situated; or, if they cannot agree thereon, then in such manner as shall be determined by the county commissioners on application of said water supply board to them, and the county commissioners are hereby authorized and directed to adjudicate upon the same.

Public ways
flowed to be
raised, etc.

SECTION 9. Said water supply board shall have power to, and when so required by the state board of health, shall establish filtration beds or a system of filtration for the filtering of the present water supply of said cities, or of any part thereof, and of any additional water supply taken under authority of this act, on land already owned or held by said cities bordering upon Wenham lake, so-called, which was acquired by them or either of them for the purpose of a water supply or for preserving the purity of the waters of said lake, not including any land under or within forty feet of the present pumping station of either of said cities; or said board may establish such filtration beds or system of filtration partly on land so acquired by said cities and partly on other land which it may take or acquire by purchase or otherwise under the authority of sections four and five hereof, as it may deem advisable: *provided, however,* that before said board shall proceed to establish any filtration beds or system of filtration it shall submit general plans for the same to the state board of health and receive its advice and approval before the work is begun. If said water supply board shall build said filtration beds or system wholly or partly on any land acquired by either or both of said cities as aforesaid, it shall first purchase said land from said cities or either of them, or take said land by right of eminent domain, in the manner provided in sections four and five hereof. If said board and either of said cities from which land is taken as aforesaid cannot agree as to the damages

May establish
filtration
beds, etc.

Proviso.

Damages.

to property sustained by it by such taking, such city may file in the superior court a petition in equity for a determination of the said damages, stating the facts which entitle it to such relief, and said court, sitting in equity, shall determine the damages, which determination shall, if the petitioner so elect, be made upon the verdict of a jury rendered under issues framed by order of said court, sitting in equity, and tried as provided in section six hereof, and the damages when finally determined shall be paid in the same manner as damages determined under the provisions of section six. If said water supply board provides for the filtration of the whole water supply of said cities, it shall provide means by which such water shall be delivered and stored after filtration in a clear water basin from which alone water may be pumped by said cities to their present reservoirs. Said water supply board shall not be required or allowed, except as hereinafter provided, to provide additional facilities for the storage of all or any part of the water diverted from Ipswich river as aforesaid by the construction of an additional reservoir or reservoirs, or by the acquisition of land therefor, until such time as the state board of health shall determine that such additional facilities are necessary, at which time the state board of health shall order such construction, and upon notice from the state board of health, said water supply board shall proceed at once to the construction of such additional facilities in such manner and within such time as may be prescribed and approved by the state board of health; *provided, however*, that if, in the judgment of said water supply board, such additional facilities for storage shall at any time be necessary or advisable, said water supply board shall so report and recommend to said cities, and upon the concurrent action of both city governments approving and authorizing such construction said water supply board may proceed with the construction of such additional facilities for storage. If the two city governments do not agree as to the time when such additional facilities shall be constructed, the state board of health shall decide as hereinbefore provided.

Storage of
water.

Proviso

Powers and
duties.

SECTION 10. Said water supply board shall have the care, operation and maintenance of the works constructed and used under the authority of this act, and shall also have the care and control of all of the present sources of water supply of said cities, including Wenham lake and Longham

reservoir, and shall have the enforcement of any rules and regulations now in force or hereafter made by the state board of health for the purpose of preventing the pollution and securing the purity and sanitary protection of the waters of said lake and reservoir; but each of said cities, with respect to the taking of water from said sources of water supply, the control and operation of its distributing system (pumping station, force main, reservoir and distributing pipes), the furnishing of water to its inhabitants by means of said system, and the establishing and collecting of rentals or rates for water so furnished, shall have and exercise all the rights and powers vested in it by the provisions of chapter two hundred and sixty-eight of the acts of the year eighteen hundred and sixty-four, chapter two hundred and ninety-four of the acts of the year eighteen hundred and eighty-five, chapter three hundred and sixty-four of the acts of the year eighteen hundred and ninety-three, and acts in amendment thereof or in addition thereto, so far as the same are not inconsistent with this act and may be applicable thereto.

SECTION 11. All expense or liability which said cities, or either of them, or said water supply board shall incur by reason of any defect or want of repair in any public or private way caused by the construction of the works herein authorized, or by reason of any act or omission of said board in the construction of said works, shall be paid by said cities in the proportion named in section three hereof.

Payment of
expenses and
liabilities.

SECTION 12. The city of Salem shall, for the purpose of paying its part of the expenses incident to the acts hereby authorized or required, from time to time, on the request of said water supply board, issue bonds or notes to an amount not exceeding nine hundred thousand dollars in the aggregate, which shall be exempt from taxation in this commonwealth, and shall not be reckoned in determining the statutory limit of indebtedness. Such bonds or notes shall have an impression of the city seal, shall be signed by the treasurer of said city and countersigned by the mayor and auditor thereof; shall have on their face the words, City of Salem Water Loan, Act of 1913; and shall be payable by such annual payments, beginning not more than one year after the date thereof, as will extinguish each loan within thirty years after its date; but the amount of such annual payment of any loan in any year shall not be less than the amount of the principal of said loan payable in any subsequent year.

City of Salem
Water Loan,
Act of 1913.

Each authorized issue of bonds or notes shall constitute a separate loan. Said bonds or notes shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually. The city may sell such bonds or notes at public or private sale, upon such terms and conditions as it may deem proper, but they shall not be sold for less than their par value.

Payment of
loan.

SECTION 13. Said city shall, at the time of authorizing said loan or loans, provide for the payment thereof in accordance with section twelve of this act; and when a vote to that effect has been passed, a sum which, with the income derived from water rates, will be sufficient to pay the annual expense of operating its water works and the interest as it accrues on the bonds or notes issued as aforesaid by the city, and to make such payments on the principal as may be required under the provisions of this act, shall without further vote be assessed by the assessors of the city annually thereafter, in the same manner in which other taxes are assessed, until the debt incurred by said loan or loans is extinguished.

City of
Beverly Water
Loan, Act of
1913.

SECTION 14. The city of Beverly shall, for the purpose of paying its part of the expenses incident to the acts hereby authorized or required, from time to time, on the request of said board, issue bonds or notes to an amount not exceeding four hundred and fifty thousand dollars in the aggregate, which shall be exempt from taxation in this commonwealth and shall not be reckoned in determining the statutory limit of indebtedness: *provided*, that at no time shall said city be requested to issue said bonds or notes to an amount greater or less than one half the amount so requested in the case of the city of Salem. Such bonds or notes shall have an impression of the city seal, shall be signed by the treasurer of said city and countersigned by the mayor and auditor thereof; shall have on their face the words, City of Beverly Water Loan, Act of 1913; and shall be payable by such annual payments, beginning not more than one year after the date thereof, as will extinguish each loan within thirty years after its date; but the amount of such annual payment of any loan in any year shall not be less than the amount of the principal of said loan payable in any subsequent year. Each authorized issue of bonds or notes shall constitute a separate loan. Said bonds or notes shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually.

The city may sell such bonds or notes at public or private sale, upon such terms and conditions as it may deem proper, but they shall not be sold for less than their par value.

SECTION 15. Said city shall, at the time of authorizing said loan or loans, provide for the payment thereof in accordance with section fourteen of this act; and when a vote to that effect has been passed, a sum which, with the income derived from water rates, will be sufficient to pay the annual expense of operating its water works and the interest as it accrues on the bonds or notes issued as aforesaid by the city, and to make such payments on the principal as may be required under the provisions of this act, shall without further vote be assessed by the assessors of the city annually thereafter, in the same manner in which other taxes are assessed, until the debt incurred by said loan or loans is extinguished.

Payment of
loan.

SECTION 16. A fund is hereby established to be known as the Salem and Beverly Water Supply Fund. Said fund shall consist of the proceeds of the sale of notes or bonds issued in accordance with the authority and requirements of sections twelve, thirteen, fourteen and fifteen hereof, and of the proceeds of sales of property made under the provisions of section eighteen hereof. Said fund shall be applied by said water supply board to the payment for property taken by said board, the payment of damages agreed upon or determined as aforesaid, and the payment of the expenses of construction of works, and other payments or liabilities specified in this act, or for which payment may be made hereunder, not, however, including expenses for the maintenance, care and operation of said works, the care and control of said sources of water supply, or the salary of the nonresident member of the board.

Salem and
Beverly Water
Supply Fund
established.

SECTION 17. The treasurer of the city of Salem is hereby made custodian and disbursing officer of said water supply board and of the funds herein provided for. The duties imposed upon such treasurer under this act shall be deemed to be a part of his duties as treasurer of the city of Salem, the faithful performance of which shall be duly secured by his bond to be given by him as such treasurer. Said treasurer shall receive and hold said funds in accordance with the directions of said board and shall make payments therefrom only upon orders or warrants duly signed by said board setting forth the purposes for which such disbursements are re-

Duties of city
treasurer of
Salem.

quired. Such treasurer shall on or before the fifteenth day of January of each year render a report to said board showing the receipts and expenditures in connection with such fund for the preceding year and the balance if any remaining, which report shall constitute a part of the report of said board made to each of said cities in accordance with section twenty hereof.

Disposal of
certain
property.

SECTION 18. Said water supply board may from time to time, by public or private sale as it may deem best, dispose of any personal property no longer needed for the construction, maintenance or operation of the works authorized by this act. Said board shall collect all moneys due for property sold by it under the provisions of this section and shall pay the proceeds thereof into the fund established by section sixteen hereof.

Payment of
expenses, etc.

SECTION 19. Said water supply board may incur such expenses as it may deem proper for the maintenance, care and operation of the works constructed under the authority of this act, and for the care and control of said sources of water supply; and said cities shall raise the funds necessary for paying such expenses, and for paying the salary of the nonresident member of said board, from current revenues derived from water rates or charges or receipts for the use of water, or from taxation, but not from loans; and said expenses of the maintenance, care and operation of the works, the care and control of said sources of water supply, and the salary of the nonresident member of said board, for the term of five years next following the passage of this act, shall be paid by said cities, on statements certified and approved by said water supply board, in the proportion named in section three hereof. Before the expiration of said term of five years, and every five years thereafter, said board shall, by vote determine and award the proportion in which, for the next succeeding term of five years, said cities shall pay the expenses of the maintenance, care and operation of said works, the care and control of said sources of water supply, and the salary of the nonresident member of said board, on statements certified and approved by said water supply board, and such determination and award shall be final and binding upon the parties, if there be no appeal therefrom as herein provided. Notice of such determination and award shall be given in writing by said board to the clerk of each of said cities. Either city within thirty days after the receipt of such notice from said board may appeal from such

Determination
of proportion,
etc.

Appeal may
be taken to
superior court,
etc.

determination and award to the superior court sitting in equity, and the court, after notice, shall appoint three commissioners, not inhabitants of either of said cities, who shall determine the proportion in which for the next succeeding term of five years said cities shall pay the expenses of the maintenance, care and operation of said works, the care and control of said sources of supply, and the salary of the nonresident member of said board, on statements certified and approved by said water supply board, and their determination and award when accepted and confirmed by the court shall be final and binding upon the parties. Either of said cities shall have the same right of appeal to the superior court as provided herein, if said board shall fail to make a determination and award as herein provided, and any determination and award made upon such appeal shall be final and binding upon the parties as provided in case of an appeal from a determination and award of said water supply board.

SECTION 20. Said water supply board shall make an annual report of its doings to each of said cities. It shall at all times keep a record of its votes, and full and accurate accounts of the authorized receipts, expenditures and disbursements under the provisions of this act, and of outstanding assets and liabilities, and shall include an abstract of the same in its annual report, together with a full account of its doings for the year.

Annual
report, etc.

SECTION 21. Whoever wilfully or wantonly corrupts, pollutes, diverts or uses any of the waters taken under this act, or injures any structure, work or other property constructed by said board and held or used under the authority of and for the purposes of this act, shall forfeit and pay to said cities three times the amount of damages assessed therefor, to be recovered in an action of tort; and upon conviction of any of the above acts shall also be punished by a fine not exceeding three hundred dollars or by imprisonment not exceeding one year. Any amount recovered as a penalty or paid as a fine under the provisions of this section shall be divided between said cities in the same proportion as expenses for the maintenance, care and operation of the works and of the care and control of the sources of water supply are, at the time of the recovering of said amount, to be paid by said cities.

Penalty for
pollution,
etc., of
water, etc.

SECTION 22. Said water supply board may on equitable terms furnish and sell water to the towns of Wenham and

May supply
water to
certain other
towns, etc.

Hamilton, or either of them, for distribution by said towns, respectively, to their inhabitants and for fire, domestic and other purposes. Full authority is hereby given to said water supply board to take or purchase such land and easements and construct such pipes, conduits and other works in the city of Beverly and towns of Wenham and Hamilton as may be necessary for the purpose of carrying out the provisions of this section; and instead of taking the water sources referred to in section two of chapter one hundred and twenty-two of the acts of the year nineteen hundred and two the said town of Hamilton may purchase water from said board to be delivered at the boundary line between Hamilton and Wenham, or at such other point as may be agreed on by said board and said town.

Enforcement of rules, regulations, etc.

SECTION 23. The supreme judicial court or any justice thereof and the superior court or any justice thereof, in term time or vacation, on the petition of the state board of health, or of any city, town, corporation, or person interested or of any attorney of any such petitioner, shall have jurisdiction in equity or otherwise to enforce the provisions of this act and of any rule, regulation or order made under authority of this act and to prevent any violation of said provisions, rules, regulations or orders.

Not to affect rights of certain municipalities.

SECTION 24. Nothing contained in this act shall prevent any municipality whose territory borders upon Ipswich river from taking from said river a supply of water for similar purposes whenever authorized by the general court so to do.

SECTION 25. This act shall take effect upon its passage.

Approved May 26, 1913.

Chap. 701 AN ACT MAKING APPROPRIATIONS FOR DEFICIENCIES IN APPROPRIATIONS FOR CERTAIN EXPENSES AUTHORIZED IN THE YEAR NINETEEN HUNDRED AND TWELVE.

Be it enacted, etc., as follows:

Appropriations.

SECTION 1. The sums hereinafter mentioned are hereby appropriated, to be paid out of the treasury of the commonwealth from the ordinary revenue, for the payment of certain expenses in excess of the appropriations therefor in the year nineteen hundred and twelve, to wit: —

Monson state hospital.

For the expenses of the Monson state hospital, the sum of two hundred nine dollars and thirty cents.

State normal school at North Adams.

For the expenses of the state normal school at North Adams, the sum of seventy dollars and fifty-five cents.