

HOUSE No. 4159

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes and Julian Cyr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Dylan A. Fernandes

Barnstable, Dukes and Nantucket

Julian Cyr

Cape and Islands

HOUSE No. 4159

By Representative Fernandes of Falmouth and Senator Cyr, a joint petition (subject to Joint Rules 12 and 9) of Dylan A. Fernandes and Julian Cyr (by vote of the town) relative to the water supply in the town of Nantucket. Environment, Natural Resources and Agriculture. [Local Approval Received.]

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. The town of Nantucket may supply itself and the inhabitants thereof with
2 water for the extinguishment of fires and for domestic and for other purposes, may establish
3 fountains and hydrants, relocate or discontinue the same, and may regulate the use of such water
4 and fix and collect rates to be paid for the use of same.

5 SECTION 2. The said town, for the purposes aforesaid, is hereby authorized to acquire
6 by purchase or take by eminent domain under chapter 79 of the General Laws the entire water
7 rights, estates, franchises and privileges of any corporation supplying water to its inhabitants and
8 thereby become entitled to all its rights and privileges and subject to all its duties and liabilities;
9 and may lease, or take by eminent domain under said chapter seventy-nine, or acquire by
10 purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, brook, spring,
11 stream or any ground water sources within its limits, not already appropriated for purposes of
12 public water supply, and any water or flowage rights connected therewith; provided, that the

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

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

43 SECTION 3. The land, water rights and other property taken or acquired under this act,
44 and all works, buildings and other structures erected or constructed under this act, shall be
45 managed, improved and controlled by the board of water commissioners hereinafter provided for
46 in section 8, in such manner as it shall deem for the best interest of the town.

47 SECTION 4. Any person or corporation injured in his or its property by any action of
48 said town or board under this act may recover damages from said town under said chapter 79;
49 provided, that the right to damages for the taking of any water, water right, or any injury thereto,
50 shall not vest until the water is actually withdrawn or diverted by said town under authority of
51 this act.

52 SECTION 5. Said town may, for the purpose of paying the necessary expenses and
53 liabilities incurred or to be incurred under the provisions of this act, issue from time to time
54 bonds or notes in accordance with the provisions of section 8 of chapter 44 of the General Laws.

55 SECTION 6. Said town shall, at the time of authorizing said loan or loans, provide for
56 the payment thereof in accordance with the provisions of section 5; and when a vote to that effect
57 has been passed, a sum which, with the income derived from the water rates, will be sufficient to

58 pay the annual expense of operating the water works, and the interest as it accrues on the bonds
59 or notes issued as aforesaid, and to make such payments on the principal as may be required
60 under the provisions of this act, shall without further vote be assessed by the town annually
61 thereafter in the same manner as other taxes, until the debt incurred by the said loan or loans is
62 extinguished.

63 SECTION 7. Whoever willfully or wantonly corrupts, pollutes or diverts any of the
64 waters taken or held under this act, or injures any structure, work or other property owned, held
65 or used by said town under the authority and for the purposes of this act, shall forfeit and pay to
66 said town three times the amount of damages assessed therefore, to be recovered in an action of
67 tort; and upon conviction of any one of the above willful or wanton acts shall be punished by a
68 fine of not more than three hundred dollars or by imprisonment for not more than one year, or
69 both.

70 SECTION 8. All water operations of said town shall be consolidated in department of
71 the town to be known as the water department. All the authority granted to the town by this act,
72 except sections 5 and 6, and not otherwise specially provided for, shall be vested in a five-
73 member board of water commissioners, hereinafter known as the "board". The board shall have
74 exclusive charge and control of the water department and water system of the town, subject
75 however to all lawful by-laws and to such instructions, rules and regulations as said town may
76 impose by its vote. A majority of said board shall constitute a quorum for the transaction of
77 business. Any vacancy occurring in said board shall be filled at the next annual town election for
78 the remainder of the unexpired term and may be filled temporarily by the board of selectmen
79 until the next annual election, in accordance with the charter of the town of Nantucket as it may

80 be amended from time to time. Said commissioners shall serve for three-year overlapping terms,
81 so arranged that the terms of not more than two commissioners shall expire each year.

82 SECTION 9. Said board shall fix just and equitable prices and rates for the use of water,
83 and shall prescribe the time and manner of payment of such prices and rates. The income of the
84 water works shall be applied to defraying all operating expenses, interest charges and payments
85 on the principal as they accrue upon any bonds or notes issued under authority of this act.
86 During any period that the water department is not operated under an enterprise fund system of
87 accounting pursuant to section 53F1/2 of chapter 44 of the General Laws, if there should be a net
88 surplus remaining after providing for the aforesaid charges it shall, subject to appropriation by
89 the town, be used for such new construction as the water commissioners may recommend or be
90 reserved by the town for future new construction, and in case a surplus should remain after
91 appropriation or reservation for such new construction, and/or in the event such surplus is not so
92 appropriated and reserved, the water rates shall be reduced proportionately. All authority vested
93 in said board by the foregoing provisions of this section shall be subject to the provisions of
94 section 8 with respect to the town's authority to adopt appropriate bylaws, rules, instructions
95 regulations. Said board shall annually, and as often as the town may require, render a report
96 upon the condition of the works under its charge and an account of its doings, including an
97 account of receipts and expenditures.

98 SECTION 10. The town of Nantucket shall be the lawful successor of the Siasconset
99 water district and the former Wannacomet Water Company, so-called, in every respect. All
100 property, both real and personal, including funds, records, furnishings and equipment whatsoever
101 in the custody of said department and company shall be transferred by operation of law to the
102 town, and no contracts or liabilities of the Siasconset water district or former Wannacomet Water

103 Company in force on the effective date of this act shall be affected by the dissolution and
104 abolition of the said district or company, except as provided in section 16, below.

105 SECTION 11. The incumbent general manager of the Wannacomet Water Company, so-
106 called, holding office as of the effective date of this act shall serve as the director of the
107 consolidated water department until the natural expiration of his current appointment, or his
108 sooner resignation, retirement or removal.

109 SECTION 12. Upon the effective date of this act, the so-called Siasconset water district,
110 created pursuant to chapter 404 of the acts of 1903, as amended, is hereby dissolved, the board of
111 water commissioners created pursuant to said chapter 404 is abolished, and the terms of any
112 incumbent members of said board of water commissioners terminated.

113 SECTION 13. The enterprise funds previously established by vote of the town pursuant
114 to section 53F1/2 of chapter 44 of the General Laws and referred to as the Siasconset Water
115 Enterprise Fund and the Wannacomet Water Enterprise Fund, to the extent they are in existence
116 as of the effective date of this act, shall hereby be consolidated into a single enterprise fund to be
117 known as the Nantucket Water Department Enterprise Fund, which consolidated fund shall be
118 subject to said section 53F1/2 in every respect.

119 SECTION 14. Any properly-adopted rules and regulations of the boards of water
120 commissioners created pursuant to chapter 404 of the acts of 1903 and chapter 476 of the acts of
121 1987, in effect upon the effective date of this act, shall remain in full force and effect until such
122 time as they are amended or abolished by the board created under section 8 this act.

123 SECTION 15. Upon the effective date of this act, the then-applicable Memorandum of
124 Agreement between the Nantucket Water Commission and the Siasconset Water shall be

125 rendered void, and the parties are relieved of their obligations under said Memorandum of
126 Agreement, except to the extent that any payments are outstanding for services rendered prior to
127 the effective date of this act.

128 SECTION 16. All personnel of the water department created under the section 8 of this
129 act are town employees, and shall be appointed by the board created under said section 8, in
130 accordance with and subject to the requirements of sections 4.5-4.9 of the town charter, chapter
131 289 of the acts of 1996 as it may be amended from time to time. Such employees shall be
132 subject to any applicable by-laws, and personnel policies and procedures of the town, unless and
133 only to the extent that such by-laws and personnel policies and procedures have been amended
134 by any valid collective bargaining agreement, where applicable. Nothing herein shall be
135 construed to alter or amend the employment status of any existing water department employees,
136 employed as of the effective date of this act, except as provided in section 12, above.

137 SECTION 17. As of the effective date of this act, the members of the board of water
138 commissioners created by the provisions of chapter 404 of the acts of 1903 and chapter 476 of
139 the acts of 1987, previously known as the Nantucket Water Commissioners, shall become the
140 first members of the five-member board of water commissioners created under section 8 of this
141 act. Such commissioners shall serve for the remainder of their elected terms or their sooner
142 vacating of office. Thereafter, such offices shall be filled in accordance with said section 8.
143 Two additional commissioners shall be elected at the first annual town election occurring no less
144 than 64 days after the passage of this act, one for a 2-year term and one for a 3-year term. If the
145 2 additional positions would remain vacant for more than 4 months, the board of selectmen may,
146 in its discretion, make temporary appointments to fill the vacancies until the annual election at

147 which the offices may legally appear on the ballot. Thereafter, all elections and temporary
148 appointments to the board shall be made in accordance with said section 8.

149 SECTION 18. Chapter 307 of the acts of 1925, chapter 436 of the acts of 1963, and
150 chapter 476 of the acts of 1987 are hereby repealed.

151 SECTION 19. This act shall take effect upon passage.