

SENATE, NO. 2308

AN ACT ESTABLISHING THE NORTH CARVER WATER DISTRICT

*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. As used in this act, the following words shall, unless the context otherwise
2 requires, have the following meanings:

3

4 "Bonds" or "bond", general obligation bonds, notes and other obligations or
5 evidences of indebtedness that the town has authorized or issued to finance the
6 acquisition of and any water system improvements within the district service to be
7 operated and managed by the district prior to the approval of this act, or that the town
8 may authorize and issue from time to time following the approval of this act, upon a two-
9 thirds vote, to pay capital costs of the district, which shall be issued for a term not
10 exceeding 40 years, and which shall otherwise be issued in accordance with the
11 provisions of chapter 44 of the General Laws. "Bonds" or "bond" shall also include any
12 general obligation bonds, notes or other obligations of the district that may be issued for
13 capital costs of the district, including land acquisition, within the district service area

14 pursuant to this act. Any bonds issued in accordance with this act shall be arranged so
15 that for each issue the amounts payable in the several years for principal and interest
16 combined shall be as nearly equal as practicable in the opinion of the officers
17 authorized to issue said bonds or, in the alternative, in accordance with a schedule
18 providing a more rapid amortization of principal. Notwithstanding any general or special
19 law to the contrary, the district may issue bonds only in the event that bonds of the
20 district must be issued to the rural development administration or to any other similar
21 federal program, to qualify for federal grants, loans or any other financial assistance
22 with respect to the development of the district's facilities. Any bonds issued by the
23 district shall not be included in any debt or other limitation contained in any general or
24 special law. In the event that the district determines to issue bonds in accordance with
25 this act, the bonds of the district shall be authorized upon a two-thirds vote of the
26 commission, with the approval of a two-thirds vote of the town. Any indebtedness of
27 the district issued in accordance with this act which shall not have been paid by the
28 district as the same shall have become due and payable, shall constitute a pledge of the
29 full faith and credit of the town and a debt of the town within the meaning of section 23
30 of chapter 59 of the General Laws. Any indebtedness of the district issued pursuant to
31 this act shall be signed by a majority of the commission and acknowledged by the
32 signatures of the treasurer and a majority of the selectmen of the town.

33 "Commission", the commissioners of the North Carver Water District
34 established herein or, if the commission shall terminate, the board, body or commission
35 succeeding to the principal functions thereof, or whatever body, person or persons to
36 whom the powers given by this chapter to the commission shall be transferred by law.

37

38 "Capital costs", any extension, improvement or enlargement of the water
39 works system of the district or to any other project of the district financed under the
40 provisions of this chapter; all or any part of the cost of acquisition, construction,
41 reconstruction, alteration, and remodeling of such works, including, without limiting the
42 generality of the foregoing, costs of labor, materials, machinery and equipment, the
43 acquisition of interests in land, structures, and all rights of any kind in real and personal
44 property, costs of demolition or relocation., costs of removal or relocation of any public
45 utilities facilities, financing charges and expenses, interest prior to, during and for
46 a period not exceeding 6 months after completion of such work, reserves for debt
47 service and other capital and current expenses, costs of architectural, engineering,
48 financial, legal and consulting services, costs of plans, specifications, appraisals,
49 surveys, inspections, financial and feasibility studies, expenses of organization,
50 administration and operations prior to the commencement of and during such work,
51 costs of equipment and supplies and advance training of operating personnel and other
52 expenses of completing and commencing operation of such work, working capital, and
53 other necessary or incidental expenses to the acquisition, construction, financing and
54 placing in operation of such work.

55

56 "Current expenses", the district's current expenses, whether or not annually recurring, of
57 maintaining, repairing and operating the water works system and any other properties of
58 the district, including, without limiting the generality of the foregoing, administrative,
59 debt service on bonds, debt service on account of bonds of the district that were paid by

60 the town on account of the failure of the district to make such payments as the same
61 shall have become due and payable, general system payments and other employee
62 benefits, engineering expenses for maintenance, operation and repairs, legal, financial
63 and auditing expenses, insurance and surety bond premiums, fees and expenses of
64 trustees and paying agents, payments to others for services rendered to the district,
65 taxes or fees which may be lawfully imposed upon the district or its income or
66 operations or the property under its control, and other current expenses required or
67 permitted by law to be paid by the district, including the funding of reasonable reserves
68 for maintenance, repair, replacements or operations.

69

70 "District", the North Carver Water District as established herein.

71

72 "Local appointing authority", the board of selectmen of the town of Carver.

73

74 "Municipality" or "town", the town of Carver, Massachusetts.

75

76 "District service area", the area exclusively within the town of Carver as shown on the
77 map of the district on file in the town clerk's office as may be amended by a majority
78 vote of the commission, a majority vote of the local appointing authority, and a majority
79 vote of the town.

80

81 "Revenues", all revenues, rates, fees, charges, rents and other receipts derived from the
82 operation of the water works system and all other properties of the district, including,

83 without limiting the generality of the foregoing, proceeds of bonds, proceeds of any
84 grant or loan to the district, investment earnings and the proceeds of insurance,
85 condemnation, sale or other disposition of properties.

86

87 "Water works system", the water supply and distribution system in the district service
88 area and under the jurisdiction, ownership, control and regulation of the district
89 including, without limiting the generality of the foregoing, all plants, works,
90 instrumentalities or parts thereof, lands, easements, rights in land, water and flowage
91 rights, approaches, water courses, rights of way, contract rights, franchises and
92 privileges, all connections, dams, wells, reservoirs, water mains and pipe lines,
93 equipment, buildings, structures, vehicles, standpipes, tanks, conduits, meters,
94 hydrants, fire connections, fixtures, purification, filtration and treatment works and other
95 adjuncts thereto, and any other property or interests in property, real or personal,
96 incidental to and included in such water supply and distribution system, and all facilities,
97 betterment, extensions, improvements and enlargements thereto and to or for the water
98 supply therefore hereafter constructed or acquired.

99

100 SECTION 2. There is hereby created the North Carver Water District. The commission
101 is hereby constituted and the exercise by the commission of the powers conferred by
102 this chapter shall be deemed and held to be the performance of an essential public
103 function. The commission shall not be subject to the supervision of the municipality or of
104 any department, commission, board, bureau or agency of the municipality except to the
105 extent and in the manner provided in this chapter.

106

107 Except as otherwise provided in this chapter, the powers of the commission shall
108 be exercised by a board of 3 members to be elected by the voters of the town
109 for overlapping 3 year terms. Vacancies shall be filled in accordance with
110 section 11 of chapter 41 of the General Laws; provided, however,
111 that at the first annual election occurring at least 64 days after the effective date
112 of this act, the initial members of the commission shall be elected to 1, 2
113 and 3 year terms, with the candidate receiving the highest number of votes to
114 serve for a 3 year term, the candidate with the second highest number of
115 votes a 2 year term, and the candidate with the third highest number of votes
116 serving for a 1 year term. Until the initial members of the commission are
117 elected in accordance with this paragraph, the board of selectmen shall appoint
118 3 members, each of whom shall be registered voters of the town. Two
119 members of the commission shall constitute a quorum and the affirmative vote of 2
120 members shall be necessary for any action taken by vote of the commission. Any such
121 action shall take effect immediately unless otherwise provided and need not be
122 published or posted.

123

124 The commission shall annually elect one of its members chair. The commission may
125 establish, with the approval of the local appointing authority and the town, by majority
126 vote of its town meeting, a reasonable annual compensation for its members for
127 attendance upon the business of the commission. In addition, each member may be
128 reimbursed for all reasonable and necessary expenses incurred in the discharge of

129 official duties as approved by the commission. In accordance with chapter 268A, the
130 commission shall be deemed to be a municipal agency and the members of the
131 commission shall be deemed to be special municipal employees.

132

133 The provisions of sections 23A to 23C, inclusive, of chapter 39 shall apply to all
134 meetings of the commission and section 10 of chapter 66 relating to the availability of
135 public records as defined in clause twenty-sixth of section 7 of chapter 4 shall apply to
136 the commission.

137

138 The district shall be deemed to be a public employer within the meaning of chapter 258.

139 The members, officers and employees of the district shall be deemed to be public
140 employees within the meaning of chapter 258. The district shall be liable in tort for
141 defects in a public way to the same extent as the municipality under chapter 84.

142

143 The district commissioners and its employees shall be subject to the provisions of
144 chapter 150E, to the extent said provisions are applicable, and for purposes of said
145 chapter, the district shall be considered an "employer" or "public employer" as defined
146 therein.

147

148 SECTION 3. The commission may appoint, employ and determine the compensation,
149 duties and conditions of employment of a superintendent, who shall not be a member of
150 the commission and who shall serve at the pleasure of the commission; provided,
151 however, that the commission may bind itself by contract to employ a superintendent,

152 but no such contract may be for a period of more than 5 years. Said contract must be
153 approved by the local appointing authority. The superintendent shall be the chief
154 operating officer of the district and shall administer and direct its affairs as authorized or
155 approved by the commission and shall have such of the powers and perform such of the
156 duties of the commission as the commission may from time to time have delegated to
157 the superintendent and not recalled. The superintendent or his or her designee as
158 approved by the commission shall be the secretary of the commission and shall keep
159 a record of the proceedings of the commission and shall be custodian of all books, and
160 documents and papers filed with the district. The superintendent and any other officer
161 designated by the commission for this purpose, each alone, may cause copies to be
162 made of all minutes and other records and documents of the district and may give
163 certificates to the effect that such copies are true copies, and all persons dealing with
164 the district may rely upon such certificates.

165

166 The commission may from time to time hire, transfer or otherwise appoint or employ
167 legal counsel, financial advisors and such other experts, engineers, agents, accountants,
168 clerks, and other consultants and employees as it deems necessary and determine their
169 duties.

170

171 The commission may purchase insurance on behalf of itself and any of its members,
172 officers, employees, or agents against any liability arising out of their status as such,
173 whether or not the commission would have the power to indemnify them against such
174 liability.

175

176 The commission shall operate on a fiscal year commencing July 1st unless otherwise
177 provided by the commission.

178

179 SECTION 4. The commission shall have all the rights and powers necessary or
180 convenient to carry out and effectuate this act, including, but without limiting the
181 generality of the foregoing, the rights and powers:

182

183 (a) to adopt rules, regulations, and procedures in connection with the performance of its
184 functions and duties, and regarding the use of, and connection to, the water works
185 system. The commission may, by regulation, provide for civil penalties not to exceed
186 \$5,000 for the violation of any rule, order, or regulation of the commission, which
187 penalties shall inure to the town. The commission may further assess fines for each
188 violation of its rules and regulations in accordance with section 21 of chapter
189 40 of the General Laws;

190

191 (b) to maintain an office in the town at such place or places as it may determine;

192

193 (c) on behalf of the district, or on behalf of the town upon the approval of the local
194 appointing authority, to apply for, receive, accept, administer, expend and comply with
195 the conditions, obligations and requirements respecting any grant, gift, loan, including
196 without limitation any grant, gift or loan from agencies of local, state and federal
197 governments, donation or appropriation of any property or money in aid of the purposes

198 of the commission and to accept contributions of money, property, labor or other things
199 of value;

200

201 (d) to acquire in the name of the district, or on behalf of the town with the approval of
202 the local appointing authority, by purchase, lease, lease-purchase, sale and leaseback,
203 gift or devise, or to obtain options for the acquisition of, any property, real or personal,
204 tangible or intangible, or any interest therein, in the exercise of its powers and the
205 performance of its duties;

206

207 (e) with the approval of the local appointing authority, to acquire, sell, lease, mortgage,
208 exchange, transfer or otherwise dispose of, or to grant options for any such purposes
209 with respect to, any property held by it, including real or personal, tangible or intangible
210 property, or any interest therein, consistent with all requirements of the General Laws;
211 provided, however, that no lease, mortgage, exchange, transfer or other disposal of real
212 property shall be permitted without the affirmative vote of the town at a duly called and
213 held town meeting to consider the same;

214

215 (f) to enter onto any land within the district service area to make surveys, borings,
216 soundings and examinations thereon, provided that the commission shall make
217 reimbursements for any injury or actual damage resulting to such lands and premises
218 or caused by any act of its authorized agents or employees and shall, so far as possible,
219 restore the land to the same condition as prior to making of such surveys, borings,
220 soundings and examinations; and to acquire by eminent domain any interest in real

221 property within the district service area in the name of the commission in accordance
222 with the provisions of chapters 79 and 80A of the General Laws or any alternative
223 method provided by law; provided, however, that the commission shall not exercise the
224 power of eminent domain without the prior approval of the town and the local appointing
225 authority. The commission may order the removal or relocation of any conduits, pipes,
226 wires, poles or other property located in public ways or places or in or upon private lands,
227 which it deems to interfere with the laying out, construction or operation of any water
228 system project, and the proper authorities shall grant new locations for any such structure
229 so removed or relocated, and the owner thereof shall be compensated by the commission
230 for the reasonable costs of such removal or relocation. Such orders, to the extent specified
231 therein, shall be deemed a revocation of the right or license to maintain such tracks,
232 pipes, conduits, wires, poles or other property in such public ways or places, and the
233 private owner of any such structures in public ways or
234 lands shall comply with any such order of the commission relating to any such structure
235 in public ways or lands. If any such owner shall fail to comply with any such order of the
236 commission relating to any such structure in public ways and places within a reasonable
237 time, to be fixed in the order, the commission may discontinue and remove such tracks,
238 conduits, pipes, wires, poles or other property, and may relocate the same, and the cost
239 of such discontinuance, removal or relocation shall be repaid to the commission by the
240 owner. No such discontinuance, removal or relocation shall entitle the owner of the
241 property thus affected to any damages on account thereof, except for reimbursement of
242 cost provided for above. This section shall not apply to facilities on property of the

243 commonwealth under the control of the department of highways or the department of
244 conservation and recreation or installed under licenses or permits granted by said
245 department or commission, except with its approval;

246

247 (g) to contract for and purchase water supply, treatment and distribution services from,
248 and to provide such services to, any person, private or public corporation or public
249 instrumentality within or without the district service area or to another town, as the
250 commission shall determine to be in the best interests of the district, to the
251 commonwealth or to the federal government when necessary or convenient for the
252 operation of the water system;

253

254 (h) to construct, improve, extend, enlarge, maintain and repair the water works system
255 and to occupy and operate, extend, enlarge, maintain and repair any portion of the
256 waterworks system owned by the town, upon such terms and conditions as the
257 commission and the local appointing authority shall determine;

258

259 (i) to use monies borrowed or appropriated by the town for the purposes of this act;

260

261 (j) to make contracts of every name and nature and to execute and deliver all
262 instruments necessary or convenient for carrying out any of its purposes, provided,
263 however, that such contracts shall be subject to all applicable provisions of chapter 30B
264 of the General Laws;

265

266 (k) to exercise the powers and privileges of, and to be subject to limitations upon towns
267 and cities provided by the provisions of sections 1 to 24, inclusive, and 27 to 29
268 inclusive, of chapter 83 of the General Laws, insofar as such provisions may be
269 applicable and are consistent with the provisions of this act;

270

271 (l) to create an overall water policy and plan for the district;

272

273 (m) to do all things necessary, convenient or desirable for carrying out the purposes of
274 this act or the powers expressly granted or necessarily implied in this act;

275

276 (n) consistent with the constitution and laws of the commonwealth., the commission
277 shall have such other powers as may be necessary for or incident to carrying out the
278 foregoing powers and the accomplishment of the purposes of this act; provided,
279 however, that nothing in this act shall impose any duty on the commission to maintain
280 groundwater levels within or without the boundaries of the town;

281

282 (o) The commission is hereby authorized to enter into one or more intermunicipal
283 agreements with governmental entities other than the town, for the provision of water
284 services. Such intermunicipal agreements shall comply with the requirements of section
285 4A of chapter 40, except that no further vote of the Carver town meeting shall be required
286 with respect to such intermunicipal agreements.

287

288 SECTION 5. In addition to the powers of the commission otherwise provided herein, the

289 commission shall have the following powers and shall be subject to the following
290 limitations:

291

292 (a) The commission is authorized and empowered to fix, revise, charge, collect and
293 abate fees, rates, rents, assessments, delinquency charges and other charges for water
294 supply and distribution and other services, facilities and commodities furnished or
295 supplied by it. Subject to paragraph (c), fees, rates, rents, assessments, delinquency
296 charges and other charges of general application shall be adopted and, as necessary,
297 revised by the commission at least annually in accordance with procedures to be
298 established by the commission for assuring that interested persons are afforded notice
299 and an opportunity to present data, views and arguments. The commission shall hold at
300 least one public hearing on its schedule of fees, rates and charges or any revision
301 thereof prior to adoption, notice of which shall be delivered to the local appointing
302 authority and be published in a newspaper of general circulation in the town in advance
303 of the hearing. No later than the date of such hearing, the commission shall make
304 available to the public the proposed schedule of fees, rates and charges. The
305 commission may combine its fees, rates and other charges for services provided by it in
306 a single schedule of charges. Fees, rates, rents, assessments, abatements, and other
307 charges established by the commission shall not be subject to supervision or regulation
308 by any department, division, commission, board, bureau, or agency of the
309 commonwealth or any of its political subdivisions.

310

311 (b) Subject to paragraph (e), the fees, rates, rents, assessments and other charges

312 established by the commission in accordance with paragraph (a) shall be so fixed and
313 adjusted in respect to the aggregate thereof so as to provide revenues at least sufficient
314 (i) to pay the current expenses of the commission, (ii) to pay the principal of, premium, if
315 any, and interest on bonds for costs as the same become due and payable, (iii) to
316 create and maintain such reasonable reserves as may be reasonably required by the
317 commission or by any trust agreement or resolution securing bonds issued by the town
318 on account of capital costs, (iv) to provide funds for paying the costs of all necessary
319 repairs, replacements and renewals of the water system and (v) to pay or provide for
320 any amounts which the commission may be obligated to pay or provide for by law or
321 contract including any resolution or contract with or for the benefit of the holders of
322 bonds issued for the commission. The annual operating budget of the commission shall
323 be submitted to the local appointing authority for review and recommendation, and all
324 funds expended by the commission shall be subject to appropriation by the town. Once
325 an appropriation on account of the district has been approved by the town, the
326 commission may allocate the use of such amounts as they shall, in their sole discretion,
327 determine.

328

329 (c) The commission shall undertake a study and examination of its estimated
330 expenses and costs of constructing, maintaining, operating and improving the system,
331 and shall, prior to one year after the effective date of this act, promulgate in accordance
332 with paragraph (a) a schedule of fees, rents, rates and other charges sufficient
333 thereafter to satisfy the requirements of paragraph (b). Such schedule shall become
334 effective upon promulgation. Such schedule shall provide for the metering, monitoring

335 and other measuring of, and charging for, water supply services provided by the
336 commission to consumers of such services in the town., including municipal property,
337 the commonwealth and all independent agencies and authorities of the town and the
338 commonwealth, and any exemptions from such charges provided to the commonwealth
339 or the town under any general or special law, are hereby declared inapplicable as of the
340 date such schedule shall be in force; provided, however, that no betterment or special
341 assessment shall be made by the commission under the authority of chapters 40 or 80 of
342 the General Laws or any other provision of law against property owned by the
343 commonwealth or any political subdivision of the commonwealth.

344

345 (d) The commission shall have the benefit, without further acceptance of any sections
346 of said chapter 80, to the extent applicable and consistent with this act. Applications
347 for abatements in accordance with said chapter 80 shall be made within 30 days
348 after the date of such demand. Upon written application, the commission shall issue lien
349 certificates in accordance with section 23 of chapter 60 of the General Laws. No
350 recordation of certificates issued by the town pursuant to said section 23 of said chapter
351 60 shall affect liens for the unpaid fees, rates, rents, assessments, and other charges of the
352 commission. In lieu of betterments, the commission may also make special assessments
353 under section 42G of chapter 40 of the General Laws, to specific properties.

354

355 (e) The town is hereby authorized to establish an Enterprise Fund in accordance with
356 the provisions of section 53 F1/2 of chapter 44 of the General Laws for the
357 operation of the water supply system. All revenues of the district, including all amounts

358 appropriated by the town on account of the district, shall be held in the care and
359 custody of the treasurer of the town and shall be disbursed only upon the approval and
360 execution of a warrant by the local appointing authority.

361

362 (f) Any water supply system, as defined in section 3, shall be subject to the rules
363 and regulations of the town, applicable laws of the commonwealth and any approvals
364 required thereunder.

365

366 (g) The activities of the commission shall be consistent with the official planning
367 documents adopted from time to time by the town boards and commissions.

368

369 (h)The commission shall not be required to connect any home, facility or lot to the
370 water supply system.

371

372 SECTION 6. Insofar as the provisions of this act are inconsistent with the provisions of
373 any general or special law, administrative order or regulation, or law of the town other
374 than rules and regulations of the board of health, the provisions of this act shall be
375 controlling.

376

377 SECTION 7. This act, being necessary for the welfare of the town and its inhabitants,
378 shall be liberally construed to effect its purposes.

379

380 SECTION 8. This act shall be construed in all respects so as to meet all constitutional

381 requirements. In carrying out the purposes and provisions of this act, all steps shall be
382 taken which are necessary to meet constitutional requirements whether or not such
383 steps are required by statute.

384

385 SECTION 9. Notwithstanding the provisions of section 13 of chapter 80 of the General
386 Laws, or the provisions of any other general or special law to the contrary, any
387 assessments on account of a betterment project of the district may be apportioned into
388 such number of equal portions, not exceeding 40, as may be determined by the district.

389

390 SECTION 10. This act shall take effect upon its passage.