

# MAINE STATE LEGISLATURE

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SEVENTH REVISION

THE  
REVISED STATUTES

OF THE  
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such railroad, but in case such company cannot agree with the parties operating such railroad, as to constructing lines along the same, or as to the manner in which lines may be constructed upon, along or across the same, either party may apply to the public utilities commission, who, after notice to those interested, shall hear and determine the matter and make their award in relation thereto, which shall be binding upon the parties. The expenses of the hearing shall be paid by the company, person or association seeking to construct lines on the railroad, except that if the public utilities commission shall find that parties operating the railroad, have unreasonably refused their consent, said parties shall pay the expenses.

\*106 Me. 365.

Provisions for weekly payment of wages apply to telegraph and telephone companies, c. 54, § 39.

Limitation of proceedings for damage for land taken by right of eminent domain, c. 95, § 112.

Penalty for improper use of telephones, c. 129, § 22; for unlawful combination against gas and electrical companies, c. 134, § 14; for malicious injuries to fixtures of electric power line, c. 139, §§ 11-12.

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## CHAPTER 69.

### Aqueducts and Water Companies.

#### Proceedings For Exercise of Right of Eminent Domain.

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### Aqueducts and Water Companies.

**Sec. 1. Meetings of proprietors for incorporation, how called. R. S. c. 61, §**

1. Any persons associated by agreement in writing as proprietors of an aqueduct, for conveying fresh water into or within any town, or as proprietors of funds for establishing such aqueduct, may apply, in writing, to some justice of the peace for the county in which any portion thereof is situated, or is proposed to be made, stating the name and style of their association, and the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place, and object of such meeting; and the proprietor, to whom the warrant is directed, shall notify such meeting by posting the substance of the warrant, with his notice annexed thereto, seven days at least before the meeting, in some public place in every town in which any portion of the aqueduct is, or is proposed to be made.

**Sec. 2. Proceedings at meeting. R. S. c. 61, § 2.** The proprietors assembled under such warrant, and their successors and assigns, shall be a corporation by the name stated in their application; and may at any legal meeting, agree on the manner of calling future meetings; choose any number of directors and other officers to manage their business, and a clerk who shall be sworn, and shall record all by-laws, votes, and other proceedings of the corporation, in books provided and kept by him therefor, open to the inspection of any person appointed by the legislature for that purpose.

**Sec. 3. Authority of directors; enforcement of assessments.** R. S. c. 61, § 3. The directors shall choose one of their number president; and may make such assessments on the proprietors of the shares in such aqueduct or funds as they find necessary; and if a proprietor fails to pay such assessment for thirty days after notice, they may maintain an action on the case in their corporate name to recover the amount thereof, or may sell, at auction, so many of his shares as are sufficient to pay the same, with necessary charges; notice of the sale of such shares shall be given by advertising in some newspaper printed in the county three weeks successively, or by posting notifications thereof, twenty days at least before the sale, in at least two public places in each town wherein such aqueduct is, or is proposed to be made; and the surplus money, if any, arising from such sale shall be paid to the owner of the share so sold.

**Sec. 4. Registry of shares and transfers.** R. S. c. 61, § 4. At or immediately after the first meeting, the clerk shall enter in such books the names of the several proprietors, and the shares owned by each; and the subsequent transfer of shares shall also be entered by him within three months after it is made, in such form and for such fees as the directors order; and no person shall be deemed a proprietor, whose share or interest is not so entered.

**Sec. 5. Powers of proprietors; manner of voting.** R. S. c. 61, § 5. The proprietors have one vote for each share, and may vote by proxy; for the breach of their by-laws they may impose penalties not exceeding thirty dollars for each offense; may purchase and hold real estate necessary for their purpose not exceeding thirty thousand dollars in value; and with the written consent of the municipal officers, they, or any person, may dig up or open any road for the purpose of laying their pipes, or repairing or extending their aqueduct; but not so as to prevent the convenient passage of teams and carriages.

**Sec. 6. Shares sold for debts of holders; franchise, pipes, fountains, etc., may be sold for corporate debts; redemption; execution, when revived by scire facias.** R. S. c. 61, § 6. Shares in such corporations are personal estate and may be attached on a writ and sold on execution for the debts of the holders, like shares in other corporations; and the franchises, fixtures, pipes, fountains, and interests in lands of such corporations are liable to attachment and sale on execution, as personal property, for their corporate debts; but the purchaser thereof at such sale shall not interfere with the possession of the corporation for two months after the sale; and within that time, it may redeem such franchise and property by paying the sum for which they were sold with interest; but if not so redeemed, the purchaser shall have the same rights under the franchise and to such property as the corporation had. Any creditor of such corporation, whose execution has been satisfied by an ineffectual sale of such franchise or property, may revive the judgment by scire facias.

112 Me. 439.

**Sec. 7. Town may use pipes in case of fire.** R. S. c. 61, § 8. A town where such aqueduct is located may put conductors into its pipes and draw water, free of expense, to extinguish fire in a burning building, if such conductors are so secured that water shall be drawn for that purpose only.

See c. 13, § 6, ¶ x.

**Sec. 8. Corporate powers continue after dissolution; enforcement of judgments.** R. S. c. 61, § 9. All contracts made by or with such corporation are in force after its dissolution; and the last shareholders shall have a corporate capacity and may prosecute and defend suits respecting such contracts, commenced within six years after the dissolution, or after the cause of action accrued; and if no corporate property can be found to satisfy such judgments, and

they are not satisfied within six months, the creditors may satisfy them from the private property of the shareholders as if the judgment had been against them in their private capacity.

**Sec. 9. Proprietors, tenants in common of property left.** R. S. c. 61, § 10. If such corporation owns any estate at its dissolution the proprietors shall be tenants in common thereof in proportion to the shares or interest which they hold in its stock.

**Sec. 10. Penalty for injuring an aqueduct.** R. S. c. 61, § 7. Whoever maliciously injures such aqueduct or any of its appurtenances forfeits not more than twenty dollars to the town, to be recovered by indictment; and is liable in a civil action, brought by the corporation, to pay treble the amount of the damages sustained thereby.

#### The Location of Property Taken For Public Uses, and the Assessment of Damages Therefor.

**Sec. 11. Rights of parties as to procedure regulated.** R. S. c. 61, § 11. 1921, c. 49, § 2. All locations made and all damages assessed for the taking of property by the exercise of the right of eminent domain, except for property taken by the United States, the state of Maine, or a county or municipality thereof, or a quasi-municipal corporation, or steam railroad or street railroad corporations, and excepting property which, when taken, is being, or is necessary to be used by the owner thereof in the performance of a public duty, shall be made and assessed and the rights of the parties shall be as follows, notwithstanding anything contained in the act granting such right.

**Sec. 12. Proceedings before entry; location and map to be filed with county commissioners; description may be corrected.** R. S. c. 61, § 12. All property so taken shall, before it is entered upon for any purpose except to make surveys, be located by a description, signed by the party taking, which shall describe in detail the property taken, and give the names of the owners thereof and shall be accompanied by a map showing said property as described. Such location and map shall be filed with the county commissioners of the county where the property is located, who shall indorse the time of filing thereon and order the location recorded. A copy of said location shall be recorded in the registry of deeds of the county or registry district where the property is located. When for any reason the taker fails to acquire the property authorized to be taken and which is described in such location, or the location recorded is defective or uncertain, the taker may, at any time, correct and perfect such location, and file a new description thereof; and in such case the taker is liable in damages, only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the taker shall not be liable for any acts which would have been justified if the original taking had been valid and legal.

Copies of proceedings to be recorded in registry of deeds, c. 15, § 18; 82 Me. 337; 94 Me. 90; 108 Me. 143; 114 Me. 150.

**Sec. 13. Owners of property taken entitled to damages; security therefor.** R. S. c. 61, § 13. For all property taken by the exercise of the right of eminent domain the owners are entitled to damages to be paid by the taker and estimated by the county commissioners, on written application of either party, made within three years after such taking; or, if proceedings thus commenced fail for causes not affecting the merits, new ones may be commenced within one year thereafter, and when no estimate is made within such time, the owner may maintain an action of trespass, or have any remedy herein provided. The guardian of a person

incapable of giving a valid conveyance whose property is taken may settle and give a valid release for damages; and persons having any interest in such property have the rights and remedies of owners to the extent of their interest. When requested by the owner, said commissioners shall require the taker to give security for the payment of damages and costs, by depositing at its risk, with the clerk, within thirty days, specie, notes, or obligations of a state or public corporation, or other security satisfactory to the party requiring it. When entitled to it, so much of any specie so deposited shall be paid to him as will satisfy his judgment. Notes or obligations so deposited shall be delivered to the officer having a warrant of distress, to be by him sold as personal property is sold on execution, to satisfy the warrant and fees, and any balance shall be paid to the taker of such property.

See c. 95, § 112.

**Sec. 14. Notice to adverse party.** R. S. c. 61, § 14. In all cases, the notice to the adverse party of the time and place of hearing on any petition to the county commissioners for the assessment of damages on account of any property so taken shall be a personal notice of fourteen days, or by publication of the petition and order of notice thereon in some newspaper published in said county, two weeks successively, the last publication being fourteen days before said hearing.

**Sec. 15. Commissioners in awarding damages may prescribe terms for use of property taken.** R. S. c. 61, § 15. The commissioners, in awarding damages for property so taken, on the application of the taker, may prescribe such terms and conditions, in all respects for the use of the property taken, by the owner thereof, and by the taker respectively, as will secure the best accommodation of the owners of the property, and the convenient use of the same by the taker. In case of appeal by either party the only question in issue shall be the amount or measure of damages on the terms and conditions imposed by the commissioners.

See c. 63, § 34.

**Sec. 16. Report of commissioners.** R. S. c. 61, § 16. The commissioners shall, at a regular session, make a report of their general estimate of damages, stating therein specifically the terms and conditions imposed by them and the rights and obligations of each party, and cause it to be recorded; their clerk shall then make out a notice to each person, stating the amount of damages awarded to him, which shall be served by an officer on those resident in the state, and upon others, if any, by a publication three weeks successively in a newspaper printed in the county, if any, if not, in the state paper. The expense of notices shall be added to the costs of the proceedings which shall be paid by the taker.

**Sec. 17. Appeal.** R. S. c. 61, § 17. Any person aggrieved by the decision or judgment of the county commissioners in relation to damages for property taken may appeal to the next term of the superior court to be held in the county where the property is situated, more than thirty days from the date when the report of the commissioners is made, excluding the day of the commencement of the session of the court, which court shall determine the same by a committee of reference if the parties so agree, or by the verdict of its jury; and shall render judgment and issue execution. If the owner appeal and the damage finally recovered is not more than the award of the county commissioners, the taker shall recover costs from the time of appeal, otherwise the owner shall recover costs. If the taker appeal and the damage finally recovered is not less than the award of the county commissioners, the owner shall recover costs from the time of appeal, otherwise the taker shall recover costs. The appellant shall serve written notice of such appeal upon the opposite party fourteen days at least before the session

of said court, and shall at the first term file a complaint setting forth substantially the facts of the case. On the trial, exceptions may be taken as in other cases.

**Sec. 18. Deposit of awards.** R. S. c. 61, § 18. When the proceedings are closed, the taker may deposit with the clerk the amount of damages awarded with interest thereon to time of deposit, which shall be in full satisfaction of all claims, unless a demand has been previously made and payment neglected.

See c. 63, § 37.

**Sec. 19. Damages remaining unpaid; proceedings in equity.** R. S. c. 61, § 19. When the damages remain unpaid for more than thirty days after they are due and demanded or the security hereinbefore provided for is not deposited, a bill in equity may be filed in court, in term time or vacation, by the person whose property is taken praying for an injunction against the use or occupation of his property taken. If proceedings for an estimation of damages are not commenced within three years, and the owner of the property files a bill praying therefor, the court may estimate the damages, decree their payment, and issue an execution therefor; and the plaintiff shall be entitled to a bill for an injunction. In either case, any justice of the court, after summary notice to the taker and upon proof of the facts, may, without any bond filed, issue an injunction prohibiting such use and occupation until all damages and costs are paid. The bill shall be entered, service of it made, and continued at the next term after the injunction is issued. At the second term, if payment has not been made, the injunction may be made absolute; and all rights acquired by taking the property cease, and the owner may maintain an action for its recovery and protection.

See c. 95, § 112.

**Sec. 20. Service of injunction.** R. S. c. 61, § 20. Service of an injunction issued against any person, whether a party to the bill or not, may be made upon him and he shall be liable to all the penalties and consequences provided for a breach of it. The court may order persons violating such injunction, after service, or using the property, to show cause at a time fixed, why a decree should not be entered and execution issued against them individually, and their goods and estate, for the damages, interest, costs, and for additional damages and costs for breach of the injunction. Upon service and return of such order, the court may enter such decree as is just and equitable against such persons, and issue execution accordingly, or may proceed against them as for breach of injunction in other chancery cases.

**Sec. 21. Failure to apply for assessment not a waiver.** R. S. c. 61, § 21. No failure by the owner of the property to make application for the assessment of damages within said three years shall be held to be a waiver by him of compensation for property so taken.

**Sec. 22. Proceedings to cure defect in taking under eminent domain.** R. S. c. 61, § 22. Whenever any taking or attempted taking under power of eminent domain shall, in any action now pending or hereafter commenced, have been adjudged defective either from formal errors in proceedings or through failure to provide, in an act expressly conferring the right of eminent domain, for any act or proceeding necessary to carry out such taking, which failure shall be deemed a substantial error by a court of last resort in this state, and judgment of title in the plaintiff shall be given, judgment of ouster or writ of possession shall be stayed until the corporation vested with the power of eminent domain shall have had opportunity to retake pursuant to the act conferring the power, if the error is formal, and until remedial legislation shall have been obtained at a session of the legislature next after the rendition of judgment when the error is substantial, and a new taking had pursuant to the amended act; but the new taking shall be

had within ninety days from the rendition of said judgment when the error is merely formal, and within six months from the adjournment of the legislature next after the rendition of judgment when the error is substantial. And nothing herein contained shall preclude or stay any action at law for damages, and the owner of the land may maintain an action for damages the same as if in possession.

### Condemnation Proceedings by Water Districts.

**Sec. 23. Necessity of taking may be determined.** R. S. c. 61, § 23. The owner of property which is the subject of appropriation for public purposes by any water district may, upon hearing, have the necessity of the particular appropriation determined.

\*124 Me. 63.

**Sec. 24. Proceedings.** R. S. c. 61, § 24. The owner of such property may, within thirty days after the beginning of condemnation proceedings, file in the office of the clerk of courts of the county where the property is situated, a petition to the superior court, for a decision as to the necessity of the appropriation. A copy of the petition and order of notice thereon, attested by the clerk, shall be served upon the respondent. Any justice of the superior court, in term time or vacation, upon such petition, may appoint three disinterested commissioners, residents of the county in which the property is situated, one of whom shall be learned in sanitary matters, to determine the necessity of the particular appropriation.

124 Me. 63.

**Sec. 25. Proceedings before commissioners.** R. S. c. 61, § 25. The commissioners shall fix a time for hearing, and give written notice thereof to the owner and to the district seeking to acquire said property. At the hearing all parties in interest shall be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals; the burden of proof to show the necessity of the particular taking shall rest upon the party seeking to acquire the property. The decision of a majority of the commissioners shall be final as to questions of fact. The prevailing party shall recover costs as in actions at law in the superior court, and execution shall issue therefor.

See c. 96, § 122; 124 Me. 63.

**Sec. 26. Condemnation proceedings by district.** R. S. c. 61, § 26. Upon the commencement of condemnation proceedings, the district seeking to thus acquire property, unless otherwise provided by law, may file a petition asking that the necessity of such taking may be determined, whereupon proceedings shall be had as in the case of a petition by the landowner.

124 Me. 63.

**Sec. 27. Certain proceedings valid.** R. S. c. 61, § 27. All plans and descriptions of land and all descriptions of other property taken by any water company for its purposes and uses, filed in the office of the county commissioners of the county where the land or other property taken is situated prior to the ninth day of March, eighteen hundred eighty-nine, are valid and legal for all purposes of taking.

124 Me. 64.

Provisions for weekly payment of wages apply to water companies, c. 54, § 39.  
Limitation of proceedings to recover damages for land taken by right of eminent domain, c. 95, § 112.  
Malicious injury of property of water companies, c. 139, § 5.  
Pollution of water supply, c. 140, § 1.