

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2119

S. P. 667

In Senate, January 28, 1976

Referred to the Committee on Public Utilities. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Cummings of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Clarify Certain Provisions of the Newport Water District
Charter.

Be it enacted by the People of the State of Maine, as follows:

P & SL 1975, c. 29, §§ 10 and 11 are repealed and the following enacted in place thereof:

Sec. 10. Authority to purchase; right of eminent domain to take property of Maine Water Company. The Newport Water District is authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is expressly delegated to said district for said purpose, the entire plant, property, franchises, rights and privileges of the Maine Water Company, except its cash assets and accounts receivable, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said company, whether the record title thereto is or is not in said Maine Water Company. Said company is authorized to sell, transfer and convey its franchises and property to said water district.

Sec. 11. Procedures for purchase or exercise of right of eminent domain. Before exercising any right of eminent domain conferred under this Act with respect to the property of the Maine Water Company, the district shall make a reasonable effort to acquire said property by purchase. The district shall cause said property to be appraised for the purpose of determining the amount that would constitute just compensation for the taking of said property. The district, its agents, employees or designees may, upon 30-days' written notice to the Maine Water Company, enter upon the real property of the Maine

Water Company, make surveys, examinations, photographs, tests and samplings of the real or personal property of the Maine Water Company for the purpose of appraising said real or personal property. Such entry as aforesaid shall take place during daylight hours. The entry and activities authorized by this section shall not constitute a trespass, but the district shall be liable for physical injury to and for substantial interference with possession or use of property of the Maine Water Company caused by its entry and activities upon the property, which damages may be recovered by complaint in a civil action. The district shall establish the amount which it believes to be just compensation for said property and shall submit to the Maine Water Company a proposed offer to purchase said property for the amount so established. The amount of said offer shall not be less than the district's approved appraisal of the fair market value of said property. Compliance by the district with the foregoing shall be determined to be, and shall constitute, a reasonable effort by the district to acquire said property by purchase.

If, within 60 days of the date the proposed offer to purchase is submitted to the Maine Water Company, the district and the Maine Water Company are unable to reach agreement as to the amount of just compensation, the district is authorized and empowered to take said plant, property and franchises as for public use and to record in the Penobscot County Registry of Deeds a notice of condemnation and taking which shall be in substantially the following form:

NOTICE OF CONDEMNATION AND TAKING

The Newport Water District does hereby give notice to all whom it may concern:

That the Newport Water District, in accordance with the authority delegated to it by the provisions of the private and special laws of 1975, chapter 29, as amended, has determined to and does hereby exercise its right of eminent domain to acquire as for public use the entire plant, property, franchises, rights and privileges of the Maine Water Company, except its cash assets and accounts receivable, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said company, whether the record title thereto is or is not in said Maine Water Company.

This Notice of Condemnation and Taking shall be recorded in the Registry of Deeds of Penobscot County, a copy shall be served upon the Maine Water Company in the manner provided by law and a copy shall be sent by certified mail to any mortgagees and holders of any tax liens or other encumbrances of record.

Dated:

NEWPORT WATER DISTRICT
 BY
 Its Chairman
 Duly Authorized

STATE OF MAINE

COUNTY OF PENOBSCOT, SS:

Date:

Personally appeared the above named
Chairman of the Newport Water District and acknowledged the above in-
strument to be his free act and deed in his said capacity and the free act
and deed of the said Newport Water District.

Before me,

.....
Justice of the Peace
Notary Public

Upon the recording of the Notice of Condemnation and Taking as aforesaid, a check in the amount determined by the district to be just compensation and a copy of the Notice of Condemnation and Taking shall be served upon the Maine Water Company. Service of the Notice of Condemnation and Taking, together with the check, shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. Acceptance and cash of the check shall not constitute a waiver of the right of the Maine Water Company to appeal the district's determination of just compensation. In the event there is a mortgage, tax lien or other encumbrance of record covering any of said property, a copy of the Notice of Condemnation and Taking shall be sent by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the office or place of abode of the holder, if known; otherwise to the office, place of abode or address as set forth in said record.

The date of the recording of the Notice of Condemnation and Taking shall be the date of taking and the recording of the Notice of Condemnation and Taking shall vest title to the property therein described in the district.

In the event that the Maine Water Company deems itself aggrieved by the district's determination of just compensation and tender thereof, as aforesaid, it may appeal to the Superior Court for Penobscot County within 30 days after the date of the receipt of the Notice of Condemnation and Taking and the tendered compensation. Such appeal shall be taken by filing a complaint setting forth substantially the facts upon which the appeal is based. The Maine Water Company shall serve notice of such appeal upon the district by sending, by registered or certified mail within the time above limited, a true copy of said complaint.

The court shall determine the amount of just compensation by a verdict of its jury, or, if the parties agree, by the court without a jury, or by a referee or referees, and shall render judgment for just compensation, with interest at the legal rate where such is due, and for costs in favor of the party entitled thereto.

If the Maine Water Company has cashed the check tendered to it by the district and the final judgment is less than the amount of the tendered check, then the court shall order the Maine Water Company to pay to the district

the excess of the compensation tendered by the district, including interest on the excess at the legal rate from the date of tender, and to pay costs from the time of appeal. Execution shall issue on such judgment.

If the final judgment, exclusive of interest, is not less than the compensation tendered by the district, exclusive of any interest allowed, then the court shall order the district to pay to the Maine Water Company the amount by which the final judgment is in excess of the compensation tendered by the district, and for interest on such excess from the date of taking, at the legal rate, and to pay costs from the time of appeal. No interest shall be allowed to the Maine Water Company on any amount paid or tendered to it by the district. Execution shall issue on such judgment.

STATEMENT OF FACT

The purpose of this bill is to clarify certain provisions of the Newport Water District Charter.