

MAINE STATE LEGISLATURE

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NEW DRAFT.

Sixty-Fifth Legislature.

HOUSE.

No. 83.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND NINETY-ONE.

AN ACT to supply the City of Auburn with Pure Water.

*Be it enacted by the Senate and House of Representatives
in Legislature assembled, as follows :*

SECTION 1. The city of Auburn, or the trustee herein-
2 after provided for, or any corporation of which either
3 may obtain control, as provided in section two, either
4 directly or through ownership of stock, are authorized
5 and empowered to take water from the Androscoggin
6 river, Wilson pond, Taylor pond, and any other pond or
7 spring in the city of Auburn, sufficient for domestic pur-
8 poses in said city, including a sufficient quantity for extin-

9 guishing fires and the supply of hotels, livery stables and
10 laundries, and for sprinkling streets within said city;
11 and for the purposes aforesaid, to take and convey
12 through the city of Auburn, and to all parts thereof, any
13 of the waters aforesaid, by aqueduct or pipe sunk to any
14 depth desirable for said purposes.

SECT. 2. The city of Auburn, or said trustee, may
2 make any necessary contract with any person or corpora-
3 tion for acquiring the ownership of a system of water
4 works within said city, or the ownership of the whole or
5 any part of the stock of any aqueduct corporation owning
6 a system of water works in said city, whereby the city, or
7 said trustee, may be entitled to purchase the whole at one
8 time, or to purchase the same in instalments through a
9 period of years.

SECT. 3. For the purpose of carrying out the provisions
2 of this act, said city, or said trustee, or any corporation
3 of which either may obtain control as provided in section
4 two, either directly or through ownership of stock, shall
5 have power, and are hereby authorized to take and hold,
6 by purchase or otherwise, any lands or real estate neces-
7 sary for laying and maintaining pipes, aqueducts, locks,
8 gates, dams, hydrants and reservoirs, for taking, con-
9 ducting, holding, discharging and distributing water, and
10 for roadways to be used as approaches thereto, doing no
11 unnecessary damage. They may enter upon said lands to
12 make surveys and locations, and shall file in the registry
13 of deeds, in the county of Androscoggin, plans of such
14 locations and land, showing the property taken, and
15 within thirty days thereafter, publish such notice of
16 such taking and filing in some newspaper in said county,

17 such publication to be continued three weeks successively ;
18 and such filing in the registry of deeds shall be in lieu of
19 any other filing now required by law. Said city, or said
20 trustee, may permit the use, for said purposes, of any
21 lands so taken by it, by any person or corporation, with
22 which it has made such a contract as is described in sec-
23 tion two, whereby the city may be entitled to acquire the
24 ownership of any aqueduct in said city.

SECT. 4. Should the city or said trustee, or such cor-
2 poration, and the owner of such land be unable to agree
3 upon the damages to be paid for such location, taking and
4 holding, the land owner, or the city, or trustee, or such
5 corporation, may within twelve months after the filing of
6 said plans and location, apply to the commissioners of the
7 county of Androscoggin, who shall cause such damages
8 to be assessed in the same manner and under the same
9 conditions, restrictions, limitations and rights of appeal,
10 as are by law prescribed in the case of damages for the
11 laying out of highways, so far as such law is consistent
12 with the provisions of this act.

SECT. 5. The city of Auburn, or said trustee, may pur-
2 chase and own stock in any aqueduct company organized,
3 or to be organized, to supply the inhabitants of said city of
4 Auburn with pure water.

SECT. 6. The city of Auburn, or said trustee, or any
2 corporation of which either may obtain control, as provided
3 in section two, either directly or through ownership of
4 stock, are authorized and empowered to contract with any
5 person or corporation to construct aqueducts, pipes, dams,
6 reservoirs, locks, gates, hydrants, and other necessary
7 structures upon lands so taken, as hereinbefore prescribed.

8 Any such corporation organized to construct any such
9 aqueduct, is empowered to place all or any part of its
10 capital stock in the name of a trustee, or trustees, and to
11 contract that said trustee, or trustees, shall sell and deliver
12 the same to the city in instalments from year to year, as
13 may be agreed upon.

SECT. 7. For the purpose of carrying into effect the
2 provisions of this act, the city council of Auburn, at a
3 meeting duly called therefor, may, as soon as this act
4 takes effect, and shall, as soon as the city comes into
5 ownership, control or management of a system of water-
6 works, by building, purchase or otherwise, elect by ballot
7 six water commissioners, whose duty it shall be to per-
8 form all such acts for the city necessary and convenient
9 for the full operation of this act, as may be prescribed
10 by ordinance, or as directed by said city council from
11 time to time. The six persons first chosen as aforesaid,
12 shall serve, one for one year, one for two years, one for
13 three years, one for four years, one for five years, one
14 for six years, from the third Monday of March then fol-
15 lowing, as may be designated by the city council when
16 elected; and thereafterwards one commissioner shall be
17 elected by ballot annually in the month of March, to
18 serve for the term of six years. The city council may
19 fill any vacancy occurring in said board by death, resigna-
20 tion or otherwise. The mayor of the city for the time
21 being shall be ex-officio a member of the board of water
22 commissioners. Until such water commissioners are
23 elected, the mayor and aldermen of the city shall perform
24 the duties of the water commissioners.

SECT. 8. Said board of water commissioners is authorized to fix the rates of water to be paid monthly, quarterly, or annually, by persons supplied with the same, subject to the action of the city council, and in the same manner determine the conditions and manner of such supply, and shall have general charge and control of the city's water system.

SECT. 9. Said city, or said trustee, or any corporation of which either may obtain control directly or indirectly, as described in section two, are authorized, for the purposes of carrying into effect the provisions of this act, to dig up and excavate any highway, lay pipe therein, and fill the same under the direction of the street commissioner.

SECT. 10. Whenever said city, or said trustee, or any corporation of which either may obtain control, as provided in section two, either directly or through ownership of stock, shall, under section one, take water from any of the sources therein named, it shall file in the Registry of Deeds, in the county of Androscoggin, a notice of such taking, describing the size, location and depth of the pipe, or pipes, through which said water is to be taken from said sources. The said city, or said trustee, or said corporation, shall pay all damages sustained by any person or corporation in property, by the taking of any water, water sources, water right, or easement, or by any other thing done by said city, or by said trustee, or by said corporation first named in this section, under the authority of this act, which shall be determined and assessed in the same manner as provided in section four, for land taken under the provisions of this act.

SECT. 11. Subject to the provisos hereinafter contained,
2 the preceding sections of this act shall not take effect,
3 unless the city of Auburn shall, within fifteen months
4 from the approval hereof, give the Auburn Aqueduct
5 Company a written notice offering to buy all its property,
6 franchises, rights and privileges except only its cash
7 assets, and shall also thereafter pay, or cause to be paid,
8 therefor a price to be determined in the manner herein
9 provided.

Unless the said city and said company shall agree upon
11 the price to be paid, or some other method of determining
12 said price, then within three months after the giving of
13 said notice, but not thereafter, either the city, or the
14 Auburn Aqueduct Company may file in the clerk's office
15 of the Supreme Judicial Court, in and for the county of
16 Androscoggin, either in term time or vacation its request
17 to the court to appoint a commission, for the purposes
18 hereinafter set out, to consist of five disinterested persons,
19 none of whom shall be residents of Androscoggin county ;
20 at least one of whom shall be a person learned in the law,
21 and at least one a competent and skilful engineer, and the
22 others well qualified to judge of the value of said property,
23 franchises, rights and privileges. Thereupon, after reason-
24 able notice ordered by the court sitting in said county, or by
25 any judge, either the court, or such judge in vacation, in
26 said county, or elsewhere, may appoint said commission.

Said commission shall, as soon as may be, but after
29 reasonable notice, hear the parties, their proofs and argu-
29 ments, and determine the value of said property, fran-
30 chises, rights and privileges, except on cash assets, as
31 aforesaid. In determining such value, the commission shall

32 take into account any existing contracts between the com-
33 pany and the city, the considerations thereof, and all acts
34 done thereunder or in pursuance thereof. The commission
35 shall have power to compel the attendance of witnesses,
36 and the production of books and papers pertinent to the
37 issue, and may administer oaths; and any witness or
38 person in charge of such books or papers, refusing to
39 attend or to produce the same, shall be subject to the
40 same penalties and proceedings, so far as applicable, as
41 witnesses summoned to attend the supreme judicial court.

The commission, or a majority thereof, after such hear-
43 ing, shall report to the court, in said county, in term time,
44 what in its judgment is a fair and just value of the prop-
45 erty, franchises, rights and privileges, which it is directed
46 to appraise, and all other findings which it may have been
47 directed by the court or judge to make, and such papers
48 and proofs taken by it, as the court or any judge thereof
49 has directed, or may from time to time direct it to return;
50 and in its report, the commission shall state the date as of
51 which the value aforesaid was fixed. The court may con-
52 firm such report, or reject it, or re-commit the same, or
53 submit the subject matter thereof to a new commission.

The fees and expenses of all the commissioners shall be
55 paid to them, one-half by the city and one-half by the
56 Auburn Aqueduct Company.

All proceedings of the court, or any judge, with refer-
58 ence to any matter herein, raising a question of law,
59 whether in term time or vacation, shall be subject to
60 exceptions in the manner provided by statute. But not-
61 withstanding said exceptions, the case shall proceed at
62 *nisi prius*, and shall not be marked "law" until after

63 judgment is entered, as hereinafter set forth, unless the
64 court or the judge being of the opinion that any question
65 involved is sufficiently important, shall otherwise order.
66 When the court confirms the report of the commission, it
67 shall enter judgment thereon, and within two calendar
68 months after the entry of such judgment, the city shall
69 notify the Auburn Aqueduct Company, in writing, of its
70 willingness to purchase said property, franchises, rights and
71 privileges, at the price determined by said judgment, and
72 to pay said company therefor. And within two calendar
73 months after such notice is received by said company, it
74 shall notify said city, in writing, that it will, or will not,
75 sell its property to said city at said price. And if said
76 company shall accept the offer, it shall forthwith cause
77 deeds of transfer and conveyance to be made, and filed in
78 the clerk's office of the supreme judicial court for Andros-
79 coggin county, for the inspection of the city of Auburn,
80 and to be approved by the court, or any justice thereof,
81 in term time or vacation.

Said deeds shall convey all the property, franchises,
83 rights and privileges, except cash assets, then owned by
84 the Auburn Aqueduct Company, to said city, or to such
85 person or persons, or corporation, in trust, for the bene-
86 fit of the city, as the city may designate, subject to any
87 mortgages given to secure the payment of bonds not
88 then due, existing thereon at the time the notice is given
89 by the city, as hereinbefore provided, and subject to a
90 lien for the adjustment of matters remaining to be
91 adjusted, as hereinafter set out. And if said city shall
92 designate that said property, franchises, rights and privi-
93 leges, shall be conveyed to any person or persons, or

94 corporation, in trust, as aforesaid, it shall also designate
95 the terms of said trust, which shall be incorporated in
96 said deed.

And when said deed or deeds shall be approved, as
98 aforesaid, they shall be delivered to said city, or said
99 trustee, as the case may be, and said city, or said trustee,
100 shall thereupon pay said company the amount deter-
101 mined by said judgment and interest thereon, less the
102 face value and accrued interest of any bonds secured by
103 any existing mortgage of any of its property or fran-
104 chises, hereinbefore provided.

If at the time of said conveyance, there shall be any
106 existing mortgage, as aforesaid, the city, or such trus-
107 tee, in his said capacity, shall assume the payment of all
108 the principal sums, and interest, remaining unpaid, or
109 thereafterwards coming due; and such trustee, in his
110 said capacity, and also the city, so far as lawful under
111 the provisions of the constitution of the State, shall be
112 holden to pay all the sums so assumed.

Nothing in this act, nor any proceedings thereunder,
114 so long as the same are pending, until conveyance is
115 made, as hereinbefore directed, shall prevent or em-
116 barrass the Auburn Aqueduct Company from supplying
117 water as authorized by its charter, or extending its works,
118 or making any improvements which will inure to its own
119 interests, or the interest of the inhabitants of Auburn, nor
120 from receiving water rents and other dues and tolls, there-
121 after accruing. After said property, rights, franchises and
122 privileges are transferred, as hereinbefore provided, the
123 court shall take account of all receipts and expenditures
124 properly had or incurred by the Auburn Aqueduct Com-

125 pany, from and after the date on which said property is
126 valued, as aforesaid, and shall enter judgment for the
127 net balance for or against the Auburn Aqueduct Com-
128 pany, as the case may be, and shall fix the time within
129 which the same shall be paid. And in the event the
130 same is in favor of the Auburn Aqueduct Company, if
131 not paid within the time so fixed, the court shall enforce
132 the same against the property, franchises, rights and
133 privileges conveyed as aforesaid, by sale, or otherwise,
134 according to the principles governing courts in equity,
135 with reference to enforcing liens and securities, and by
136 issuing execution against the city, so far as may lawfully
137 be done under the constitution of the State, and against
138 such person or corporation trustee; and in like manner
139 it shall issue execution against the Auburn Aqueduct
140 Company, for any balance then due from it.

When said conveyance is made as aforesaid to said city,
142 or trustee, the city shall thereupon enter into possession
143 and control of the property, rights, franchises and privi-
144 leges therein transferred, subject to be divested thereof
145 only upon a failure to pay the mortgaged indebtedness
146 aforesaid of the Auburn Aqueduct Company, or other-
147 wise, as is herein provided.

Provided, nevertheless, that if the Auburn Aqueduct
149 Company shall refuse to accept the price as determined
150 by said judgment, or to sell its property therefor, or
151 shall neglect to notify said city, within the time limited
152 by this section, of its acceptance or refusal, then all
153 other sections of this act shall have the same effect as
154 though this section did not exist.

SECT. 12. Any person or persons, or corporation to
2 whom the property and franchises of the Auburn Aque-

3 duct Company shall be conveyed in trust, as provided in
4 section eleven, or to whom any stock in any company shall
5 be conveyed in trust for the benefit of said city, shall
6 hold the same as security for any person or corporation
7 who may have advanced money for its purchase; and may,
8 from time to time, sell and deliver the same, or debent-
9 ures representing the same, to the city, discharged of its
10 trust, in such manner and upon such terms as may be
11 agreed upon by the city and such trustee, and the persons
12 advancing such money. And as further security, may be
13 entitled by contract to receive the net rents and profits of
14 said property, with one per cent of the principal annually,
15 and apply them to the payment of any such advances and
16 the interest thereon. Such trustee, with the consent of
17 the city, may also create or hold security on said property,
18 rights, privileges and franchises, for money advanced by
19 any person or corporation to improve or extend the system
20 of water works hereinbefore described.

SECT. 13. For the purpose of raising money to carry
2 out the provisions of this act, the city of Auburn may
3 issue bonds, registered, or with interest coupons, under
4 the direction of its city council, to an amount which,
5 taken in connection with the other indebtedness of the
6 city, will not exceed the amount limited by the constitu-
7 tion of Maine. And such bonds shall be signed by the
8 mayor and treasurer of the city, but the coupons need be
9 signed by the treasurer only, and shall be designated and
10 marked "The Auburn Water Loan." And for the same
11 purposes the city may sell any stock which it now holds in
12 any corporation.

SECT. 14. The rates for the supply of water under this
2 act shall be fixed so that all expenses for repairs and

3 management shall be paid annually, together with interest,
4 and not less than one per cent of the principal expenditures.

SECT. 15. For the purpose of raising money to carry
2 out the provisions of this act, and to extend and improve
3 the system of water works, which may be purchased
4 from the Auburn Aqueduct Company, by building
5 reservoirs and pumping stations, buying necessary
6 machinery and appliances connected therewith, and lay-
7 ing additional pipes and mains, said trustee or trustees
8 are authorized, with the consent of the city, to hire money
9 and to issue therefor interest-bearing debentures, in the
10 manner and at a rate not to exceed that which may
11 be specified in the deed of trust from said company to
12 said trustees, which deed of trust shall be made in accord-
13 ance with the directions of said city. Said debentures
14 shall be made redeemable by the city or trustees from
15 year to year through a series of years, and said trustees
16 may create or hold security on said property for the pay-
17 ment of said debentures. And when said city shall have
18 paid from its own funds ten per cent of the amount paid
19 to the Auburn Aqueduct Company, said debentures may
20 be purchased and held by savings banks in this State.

SECT. 16. Except as herein otherwise provided this
2 act shall take effect when approved.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 12, 1891. }

Tabled, pending first reading, by Mr. SAVAGE of Auburn, and ordered
printed.

W. S. COTTON, *Clerk.*