

# MAINE STATE LEGISLATURE

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NEW DRAFT.

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# Sixty-Seventh Legislature.

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HOUSE.

No. 360.

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## STATE OF MAINE.

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

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AN ACT to supply the city of Hallowell with pure water.

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

SECTION 1. The city of Hallowell is hereby authorized  
2 to take, hold and convey into, about and through the said  
3 city from any point in Cobbosseecontee stream that may  
4 be deemed expedient, between the dam at the outlet of  
5 Cobbosseecontee Great pond and dam number eight (8).  
6 on said stream, water sufficient for the use of said city and  
7 the inhabitants thereof for domestic and municipal pur-  
8 poses ; and may flow, take and hold, by purchase or other-  
9 wise, subject to the limitations of this act, any lands or  
10 real estate for laying and maintaining pipes for conducting,

11 discharging, disposing of and distributing water, and for  
12 constructing and maintaining reservoirs, standpipes, dams  
13 and such other works as may be deemed necessary or  
14 proper for raising, forcing, retaining, distributing, dis-  
15 charging or disposing of said water and for the erection  
16 of any works for said purposes.

SECT. 2. Said city may purchase, or take and hold, and  
2 forever maintain any dam, or privilege, on said stream  
3 between said outlet dam and said dam number eight, subject  
4 to the limitations of this act. It may also lay and maintain  
5 pipes from said stream at said point, to, into, through  
6 and about said city and secure and maintain the same by  
7 any suitable works therefor; may make and establish  
8 such public fountains and hydrants in such places as may  
9 from time to time be deemed proper; may regulate the  
10 use of said water within said city, and establish, receive  
11 and collect the rates to be paid therefor; and the said city  
12 may, for the purposes aforesaid, carry and conduct and main-  
13 tain any pipes or other works by it to be made, laid down,  
14 or conducted, over, under, through or across any water  
15 course, stream, bridge, railroad, street railroad, highway  
16 or other way in such manner as not to obstruct the travel  
17 or full beneficial use thereof; may enter upon and dig up  
18 any such road, street or way for the purpose of laying  
19 down pipes beneath the surface thereof and for maintain-  
20 ing and repairing the same; and in general, may do any  
21 other acts and things necessary or convenient and proper  
22 for carrying out the purposes of this act with its limita-  
23 tions.

SECT. 3. In taking any dam or privilege on said  
2 stream, the said city shall only take the same subject to the  
3 servitudes thereon or easements therein now held by the

4 owners of the said outlet dam, and such easements and  
5 servitudes, except as to the diversion of water through  
6 said pipes, are exempt from the power of taking otherwise  
7 herein granted. The said city shall have the right to take  
8 and divert from said stream at the point above limited,  
9 not exceeding five hundred thousand gallons of water per  
10 day, paying therefor in the manner hereinafter provided ;  
11 it may also take so much of the easements and superior  
12 rights owned or held by the owners of said outlet dam as  
13 shall be necessary to furnish at the pumps of said city the  
14 quantity of water per day so to be taken and diverted as  
15 aforesaid. The Gardiner Water Power Company, its  
16 successors and assigns, shall have the right at any and all  
17 reasonable times, of inspecting the pumping station and  
18 the records of the pumping works of said city, and said  
19 city shall place and keep revolution counters and an  
20 accurate record of the same open at all times to the  
21 inspection of all parties interested. Or said city, in lieu  
22 of taking water from said stream as aforesaid, may take  
23 and divert from Cobbosseecontee great pond above said  
24 outlet dam to the amount aforesaid, subject to the pro-  
25 visions of this act.

SECT. 4. Said city is authorized to lay and maintain  
2 its pipes under, in and over the Cobbosseecontee stream  
3 and to build and maintain all necessary structures therefor.

SECT. 5. Said city shall file in the registry of deeds  
2 for the county of Kennebec, plans of the location of all  
3 land, interests in real estate, water and water rights,  
4 taken under the provisions of this act ; stating therein the  
5 quantity of water so to be taken and diverted per day as  
6 aforesaid and the easements and servitudes so to be taken

7 as hereinbefore described and limited ; and no other entry  
8 shall be made on any lands so taken, except to make sur-  
9 veys, until the expiration of ten days from such survey ;  
10 and with said plan said city may file a statement of the  
11 damages it is willing to pay to any person for the prop-  
12 erty or rights so taken, and if the amount finally awarded  
13 does not exceed that sum, the city shall recover costs  
14 against such person, otherwise such person shall recover  
15 costs against the city.

SECT. 6. Said city shall be held liable to pay all dam-  
2 ages that shall be sustained by any persons or corpora-  
3 tions by the taking of any lands, interests in real estate,  
4 water, water rights, rights of way, or other property, or  
5 by excavating through any land for the purpose of sur-  
6 veying for, locating, maintaining, laying or building dams,  
7 reservoirs, standpipes, stations, pipes, hydrants or other  
8 structures, by taking and holding any lands necessary for  
9 flowage, and for any other injuries resulting from the  
10 exercise of any of the powers granted by this act ; and if  
11 any person sustaining damage as aforesaid shall not agree  
12 with said city upon the sum to be paid therefor, either  
13 party, on petition to the county commissioners for Kenne-  
14 bec county within twelve months after said plans are filed  
15 may have said damage assessed by them, and subsequent  
16 proceedings and right of appeal thereon shall be had in  
17 the same manner and under the same restrictions, condi-  
18 tions and limitations as are by law prescribed in the case  
19 of damages by the laying out of highways. Failure to  
20 apply for said damages within said twelve months shall be  
21 held to be a waiver of the same.

SECT. 7. The rights, powers and authorities given to  
2 the city of Hallowell, by this act, shall be exercised by the

3 said city, subject to the restrictions, duties and liabilities  
4 herein contained, in such manner and by such commission-  
5 ers, officers, agents and servants, chosen at such times and  
6 for such terms of office as the city council of said city shall  
7 from time to time ordain, appoint and direct.

SECT. 8. For the purposes hereof, said city is author-  
2 ized from time to time, to grant, assess, collect and appro-  
3 priate in the same manner as other money is granted,  
4 assessed, collected and appropriated for other city pur-  
5 poses such sums of money not exceeding twenty thousand  
6 dollars as may be necessary herefor. Said city is further  
7 authorized to raise money therefor by issuing and selling  
8 its bonds, from time to time, as the same shall become  
9 needful, to such an amount as may be necessary and oth-  
10 erwise lawful. Said bonds shall be designated and  
11 marked "City of Hallowell Water Loan Bonds," on such  
12 time and rates and in such form as the city council may  
13 determine.

SECT. 9. The said city is authorized to establish, assess,  
2 collect and receive such water rates as shall pay the inter-  
3 est on said bonds, the expenses of carrying on or running  
4 said works, and repairing the same, and for the creation  
5 of a sinking fund as hereafter provided. And the city  
6 council of said city is authorized, from time to time, to  
7 grant, assess, collect and appropriate in the same manner  
8 as other money is granted, assessed, collected and appro-  
9 priated for other city purposes, such sums of money as  
10 shall be necessary to pay any deficiency in the amount  
11 assessed and collected, as aforesaid, through said water  
12 rates, to pay said interest and expenses and for the crea-  
13 tion of said sinking fund.

SECT. 10. In order to create a sinking fund to pay and  
2 extinguish said bonds at maturity, said city is authorized  
3 to annually grant, assess, collect and appropriate in the  
4 same manner as other money is granted, assessed, collected  
5 and appropriated for other city purposes a sum not exceed-  
6 ing five thousand dollars a year and for such number of  
7 years that said fund thus created, with accumulated interest  
8 or income thereof, shall meet said bonds at maturity; said  
9 money thus raised shall be held and invested in the pur-  
10 chase of bonds of said city or in such investments as are  
11 permitted by law in the case of savings banks.

SECT. 11. This act shall be null and void unless the  
2 said city shall commence to supply water hereunder within  
3 four years from the approval of this act.

SECT. 12. Subject to the provisions hereinafter con-  
2 tained the preceding sections of this act shall not take  
3 effect, unless the said city of Hallowell shall, within  
4 eighteen months after approval hereof, give the Hallowell  
5 Water Company a written notice offering to buy all its  
6 property, franchises if any, rights and privileges except  
7 only its cash assets, at a price to be determined in the  
8 manner hereinafter provided, and unless said city shall  
9 also thereafter pay therefor the price thus determined.  
10 Unless said city and said company shall otherwise agree  
11 on the price to be paid, then within three months after the  
12 giving of said notice, but not thereafter, either said city  
13 or said company may file in the clerk's office of the supreme  
14 judicial court, in and for the county of Kennebec, either  
15 in term time or vacation, its request to the court to appoint  
16 a commission, for the purposes hereinafter set out, to con-  
17 sist of three disinterested persons, none of whom shall

18 be residents of Kennebec county ; at least one of whom shall  
19 be learned in the law, and the others well qualified to judge  
20 of the value of said property, franchises if any, rights and  
21 privileges. Thereupon, after reasonable notice ordered by the  
22 court sitting in said county, or by any judge, either the court,  
23 or such judge in vacation, in said county or elsewhere, may  
24 appoint said commission. Such commission shall, as soon  
25 as may be, but after reasonable notice, hear the parties,  
26 their proofs, and arguments, and determine the value of  
27 said property, franchises, if any, rights and privileges,  
28 except only cash assets as aforesaid. The commission shall  
29 have power to compel the attendance of witnesses, and  
30 the production of books and papers pertinent to the issue,  
31 and may administer oaths ; and any witness or person in  
32 charge of such books or papers, refusing to attend or to  
33 produce the same, shall be subject to the same penalties  
34 and proceedings, so far as applicable, as witnesses sum-  
35 moned to attend the supreme judicial court. The com-  
36 mission, or a majority thereof, after such hearing, shall  
37 report to the court, in said county, in term time, what  
38 in its judgment is a fair and just value of the prop-  
39 erty, franchises, rights and privileges, which it is  
40 directed to appraise, and all other findings which  
41 it may have been directed by the court or judge  
42 to make, and such papers and proofs taken by it, as the  
43 court or any judge thereof has directed, or may from time  
44 to time direct it to return ; and in its report, the commis-  
45 sion shall state the date as of which the value aforesaid  
46 was fixed, from which date interest on said award shall  
47 run. The court may confirm such report or reject it, or  
48 recommit the same, or submit the subject matter thereof  
49 to a new commission. The fees and expenses of all the



50 commissioners shall be paid to them, one-half by the city  
51 and one-half by the Hallowell Water Company. All pro-  
52 ceedings of the court, or any judge, with reference to any  
53 matter herein, raising a question of law, whether in term  
54 time or vacation, shall be subject to exceptions in the  
55 manner provided by statute. But notwithstanding said  
56 exceptions, the case shall proceed at *nisi prius*, and shall  
57 not be marked "law" until after judgment is entered, as  
58 hereinafter set forth, unless the court or the judge, being  
59 of the opinion that any question involved is sufficiently  
60 important, shall otherwise order. When the court con-  
61 firms the report of the commission, it shall enter judg-  
62 ment thereon, and within two calendar months after the  
63 entry of such judgment, the city shall notify the said com-  
64 pany, in writing, of its willingness to purchase said prop-  
65 erty, franchises, rights and privileges, at the price  
66 determined by said judgment and to pay said company  
67 therefor.

If said city shall not thus notify within said two months,  
69 then it shall be held to pay to said water company all  
70 reasonable charges incurred on account of said appraisal,  
71 including counsel and witness fees, and fees and expenses  
72 of commissioners paid by it; all items to be passed upon,  
73 without appeal, by the single justice presiding at the next  
74 term of the supreme judicial court for Kennebec county,  
75 sitting after the expiration of said two months, and for  
76 the amount thus fixed, execution shall issue in favor of  
77 said water company against said city. And within two  
78 calendar months after such notice is received by said com-  
79 pany, it shall notify said city, in writing, that it will or  
80 will not, sell its property to said city at said price; and

81 if said company shall accept the offer, it shall forthwith  
82 cause deeds of transfer and conveyance to be made and  
83 filed in the clerk's office of the supreme judicial court  
84 for Kennebec county, for the inspection of the city of  
85 Hallowell, and to be approved by the court, or any justice  
86 thereof, in term time or vacation. Said deeds shall con-  
87 vey all the property, franchises, rights and privileges,  
88 except cash assets, then owned by the said Hallowell  
89 Water Company to said city, subject to any mortgages  
90 given to secure the payment of debts existing thereon at  
91 the time the notice is given by the city, as hereinbefore  
92 provided and subject to a lien for the adjustment of matters  
93 remaining to be adjusted as hereinafter set out.

And when said deed or deeds shall be approved as  
95 aforesaid, they shall be delivered to said city, and said  
96 city shall thereupon pay said company the amount deter-  
97 mined by said judgment and interest thereon, less the  
98 face value and accrued interest of any debts secured by  
99 any existing mortgage of any of its property and fran-  
100 chises, as hereinbefore provided. If at the time of said  
101 conveyance, there shall be any existing mortgage, as  
102 aforesaid, the city shall assume the payment of all the  
103 principal sums and interest, remaining unpaid, or there-  
104 afterwards coming due, and the city, so far as lawful  
105 under the provisions of the constitution of the state, shall  
106 be holden to pay all the sums so assumed.

Nothing in this act, nor any proceedings thereunder, so  
108 long as the same are pending, until conveyance is made,  
109 as hereinbefore directed, shall prevent or embarrass the  
110 Hallowell Water Company from supplying water as au-  
111 thorized by its charter, or extending its works, or making

112 any improvements which will inure to its own interests, or  
113 the interests of the inhabitants of Hallowell, nor from  
114 receiving water rents and other dues and tolls, thereafter  
115 accruing. After said property, rights, franchises and  
116 privileges are transferred, as hereinbefore provided, the  
117 court shall take account of all receipts and expenditures  
118 properly had or incurred by the Hallowell Water Com-  
119 pany, from and after the date on which said property is  
120 valued, as aforesaid, and shall enter judgment for the  
121 net balance for or against the Hallowell Water Company,  
122 as the case may be, and shall fix the time within which  
123 the same shall be paid. And in the event the same is in  
124 favor of the Hallowell Water Company, if not paid  
125 within the time so fixed, the court shall enforce the  
126 same against the property, franchises, rights and privi-  
127 leges conveyed as aforesaid by sale or otherwise, accord-  
128 ing to the principles governing courts in equity, with refer-  
129 ence to enforcing liens and securities, and by issuing  
130 execution against the city, as far as may lawfully be done  
131 under the constitution of the state, and in like manner it  
132 shall issue execution against the Hallowell Water Com-  
133 pany, for any balance then due from it. When said  
134 conveyance is made as aforesaid to said city, and pay-  
135 ment therefor made, the city shall thereupon enter into  
136 possession and control of the property, rights, franchises  
137 and privileges therein transferred, subject to be divested  
138 thereof only upon a failure to pay the mortgage indebt-  
139 edness aforesaid of the Hallowell Water Company, or  
140 otherwise, as is herein provided. Provided, neverthe-  
141 less, that if the Hallowell Water Company shall refuse  
142 to accept the price as determined by said judgment, or

143 to sell its property therefor, or shall neglect to notify  
144 said city, within the time limited by this section, of its  
145 acceptance or refusal, then all other sections of this act  
146 shall have the same effect as though this section did not  
147 exist.

SECT. 13. Except as herein otherwise provided, this  
2 act shall take effect when approved.

STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
March 13, 1895. }

Reported by Mr. KNOWLTON of Portland, from Committee on Judiciary, and ordered printed under house rules.

W. S. COTTON, *Clerk.*