

MAINE STATE LEGISLATURE

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Seventieth Legislature.

HOUSE.

No. 429

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND ONE.

AN ACT authorizing the inhabitants of Orono to supply the
town of Orono with pure water.

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

Section 1. The town of Orono, by its municipal officers, or
2 by a commission, as hereinafter provided, acting for and in
3 behalf of said town, is authorized and empowered to take
4 water from the Penobscot river or its branches, or from any
5 spring, pond, brook or other water sources, natural or arti-
6 ficial, in the town of Orono, sufficient for domestic purposes
7 in said Orono, including a sufficient quantity for extinguish-
8 ing fires, and the supply of hotels, livery stables and laun-
9 dries, and for sprinkling streets and lawns within said town
10 as well as for manufacturing purposes; and for the purposes
11 aforesaid, to take and convey through, and to all parts of

12 said Orono, any of the waters aforesaid, by aqueduct or pipe
13 sunk to any depth desirable for said purposes.

Sect. 2. The town of Orono, by said municipal officers, or
2 by said commission, may make any necessary contract with
3 any person or corporation for acquiring the ownership of a
4 system of waterworks within said town of Orono, or the
5 ownership of any part of such system of waterworks existing
6 within said town of Orono, or the ownership of the whole or
7 any part of the stock of any aqueduct corporation, or any
8 other corporation owning a system of waterworks, or any
9 part thereof, in said town of Orono, whereby the said town
10 of Orono, by its municipal officers or said commission, may
11 be entitled to purchase the whole at any one time, or to pur-
12 chase the same in installments through a period of years.

Sect. 3. For the purpose of carrying out the provisions of
2 this act, said town of Orono, by its municipal officers, or said
3 commission shall have power, and are hereby authorized to
4 take and hold, by purchase or otherwise, any lands or real
5 estate necessary for laying and maintaining pipes, aqueducts,
6 locks, gates, dams, hydrants and reservoirs, for taking, con-
7 ducting, holding, discharging, and distributing water, and
8 for roadways to be used as approaches thereto, doing no un-
9 necessary damage. They may enter upon said lands to make
10 surveys and locations, and shall file in the registry of deeds,
11 in the county in which such lands or property taken lies, plans
12 of such locations and land, showing the property taken with-
13 in said county, and within thirty days thereafter, publish
14 such notice of such taking and filing in some newspaper in
15 said county, wherein the said land is taken, such publication
16 to be continued three weeks successively; and such filing in
17 the registry of deeds shall be in lieu of any other filing now
18 required by law. Said town of Orono, by its municipal offi-
19 cers, or by said commission, may permit the use, for said pur-

20 poses, any lands so taken by it, by any person or corporation,
21 with which it has made such a contract as is described in
22 section 2, whereby the said town of Orono may be entitled
23 to acquire the ownership of any aqueduct or system of water-
24 works or any part thereof in said town of Orono.

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

Sect. 5. The town of Orono, by its municipal officers, or
2 said commission, are authorized and empowered to contract
3 with any person or corporation to construct aqueducts, pipes,
4 dams, reservoirs, locks, gates, hydrants, and other neces-
5 sary structures upon lands so taken, as hereinbefore pre-
6 scribed. And in case any such corporation is organized to
7 construct any such aqueduct, it is empowered to place all or
8 any part of its capital stock in the name of a trustee, or trus-
9 tees, and to contract that said trustee, or trustees, shall sell
10 and deliver the same to the said town of Orono in install-
11 ments from year to year, as may be agreed upon.

Sect. 6. For the purpose of carrying into effect the pro-
2 visions of this act, the town of Orono, at a meeting duly
3 called therefor, may, as soon as this act takes effect, if it so
4 elects, or at any time thereafter, or whenever the said town

5 of Orono comes into ownership, control or management of a
6 system of waterworks, by building, purchase, or otherwise,
7 elect by ballot three water commissioners, whose duty it shall
8 be to perform all such acts for the town, necessary and con-
9 venient for the full operation of this act, as may be pre-
10 scribed by ordinance, or as may be directed by the municipal
11 officers of said town from time to time. The three persons
12 first chosen as aforesaid, shall serve, one for one year, one for
13 two years, one for three years, from the day of the annual
14 March meeting then following, as may be designated by the
15 municipal officers of the said town of Orono; and thereafter-
16 wards one commissioner shall be elected by ballot annually at
17 the annual March meeting, to serve for the term of three
18 years. The municipal officers of said town of Orono may fill
19 any vacancy occurring by death, resignation or otherwise.
20 The chairman of the municipal officers of said town of Orono
21 for the time being shall be ex-officio a member of the board
22 of water commissioners. Until such water commissioners are
23 elected, the municipal officers of said town of Orono shall per-
24 form the duties of the water commissioners.

Sect. 7. Said municipal officers of said town of Orono, or
2 said water commissioners in case water commissioners are
3 elected as hereinbefore provided, are authorized to fix the
4 rates of water to be paid monthly, quarterly, semi-annually,
5 or annually, by persons or corporations supplied with the
6 same, and in the same manner determine the conditions and
7 manner of such supply, and shall have general charge and
8 control of the town's water system.

Sect. 8. Said town of Orono, or said commission, or any
2 corporation which either may obtain control directly or in-
3 directly, as described in section 2, are authorized, for the pur-
4 poses of carrying into effect the provisions of this act, to dig
5 up and excavate any highway, lay pipe therein, and fill the

6 same under the directions of the road commissioner or such
7 person acting in that behalf.

Sect. 9. Whenever said town of Orono, or said trustee, or
2 any corporation of which either may obtain control, as pro-
3 vided in section 2, either directly or through ownership of
4 stock, shall, under section 1, take water from any of the sour-
5 ces therein named, it shall file in the registry of deeds, in the
6 county in which such source of supply is located, a notice of
7 such taking, describing the size, location and depth of the
8 pipe, or pipes, through which said water is to be taken from
9 said source or sources. The said town of Orono, or said
10 trustee, or said corporation, shall pay all damages sustained
11 by any person or corporation in property, by the taking of
12 any water, water sources, water right, or easements, or by
13 any other thing done by said town, or by said trustee, or by
14 said corporation first named in this section, under the author-
15 ity of this act, which shall be determined and assessed in the
16 same manner as provided in section 4, for land taken under
17 the provisions of this act.

Sect. 10. Subject to the provisos hereinafter contained, the
2 preceding sections of this act shall not take effect, until the
3 said town of Orono shall, by its municipal officers or by its
4 commission, provided for in section 6 of this act, give the
5 Orono Water Company a written notice offering to buy so
6 much of the property belonging to said company as may be
7 located within the limits of the town of Orono at the time of
8 such written notice together with such rights and privileges
9 and franchises of said company pertaining to the same, ex-
10 cept only cash assets, and shall also thereafter pay, or cause
11 to be paid, therefor, a price to be determined in a manner
12 herein provided. Unless the town of Orono, by its officers
13 aforesaid, and said company shall agree upon the price to be
14 paid, or upon some other method of determining said price,

15 then within three months after the giving of said notice but
16 not thereafter, either the said town or the said Orono Water
17 Company may file in the clerk's office of the supreme judicial
18 court, in and for the county of Penobscot, either in term
19 time or vacation, a request to the court to appoint a com-
20 mission, for the purposes hereinafter set out, to consist of
21 three disinterested persons, none of whom shall be residents
22 of Penobscot county; at least one of whom shall be a person
23 learned in the law, and at least one a competent and skillful
24 engineer, and the other a person well qualified to judge of
25 the value of said property, rights, privileges and franchises.
26 Thereupon, after reasonable notice ordered by the court sit-
27 ting in said county, or by any judge, either the court, or such
28 judge in vacation, in said county, or elsewhere, may appoint
29 said commission. Such commission shall, as soon as may be,
30 after reasonable notice, hear the parties, their proofs, and ar-
31 guments, and determine the value of said property, rights,
32 privileges and franchises, except only cash assets as aforesaid.
33 In determining such value the commission shall take into
34 account any existing contracts between the said company and
35 the town of Orono, the considerations thereof and all acts
36 done thereunder or in pursuance thereof. The commission
37 shall have power to compel the attendance of witnesses, and
38 the production of books and papers pertinent to the issue,
39 and may administer oaths; and any witness or person in
40 charge of such books or papers, refusing to attend or produce
41 the same shall be subject to the same penalties and proceed-
42 ings, so far as applicable, as witnesses summoned to attend
43 the supreme judicial court. The commission, or a majority
44 thereof, after such hearing, shall report to the court, in said
45 county, in term time, what in its judgment is a fair and just
46 value of the property, rights, privileges and franchises, which
47 it is directed to appraise, and all other findings which it may

48 have been directed by the court or judge to make, and such
49 papers and proofs taken by it, as the court or any judge there-
50 of has directed, or may from time to time direct to return;
51 and in its report, the commission shall state the date as of
52 which the value aforesaid was fixed. The court may confirm
53 such report, or reject it, or recommit the same, or submit the
54 subject matter thereof to a new commission. The fees and
55 expenses of all the commissioners shall be paid to them one-
56 half by the town of Orono and one-half by the Orono Water
57 Company. All proceedings of the court, or any judge, with
58 reference to any matter herein, raising a question of law,
59 whether in term time or vacation, shall be subject to excep-
60 tions in the manner provided by statute. But notwithstand-
61 ing said exceptions, the case shall proceed at nisi prius, and
62 shall not be marked "law" until after judgment is entered,
63 as hereinafter set forth, unless the court or the judge being
64 of opinion that any question involved is sufficiently important,
65 shall otherwise order. When the court confirms the report
66 of the commission, it shall enter judgment thereon, and with-
67 in two calendar months after the entry of such judgment,
68 the town shall notify the Orono Water Company, in writing,
69 either of its willingness to purchase said property, so situ-
70 ated within the limits of said town of Orono, rights, privi-
71 leges and franchises, at the price determined by said judg-
72 ment, and to pay therefor, or of its determination to reject the
73 same. And within two calendar months after such notice is
74 received by said company, it shall notify said town, in writing,
75 that it will or will not, sell its property as aforesaid to said
76 town at said price. And if said company shall accept the
77 offer, it shall forthwith cause deeds of transfer and convey-
78 ance to be made, and filed in the clerk's office of the supreme
79 judicial court for Penobscot county, for the inspection of the
80 town of Orono, and to be approved by the court or any justice

81 thereof, in term time or vacation. Said deeds shall convey
82 all the property, rights, privileges and franchises, except cash
83 assets, then owned by the Orono Water Company, within
84 said town of Orono, to said town, or to such person or per-
85 sons or corporation in trust, for the benefit of said town,
86 as the said town may designate, subject to any mortgages pro
87 rata in relation to such rights, privileges, property and fran-
88 chises given to secure the payment of bonds not then due,
89 existing thereon at the time the notice is given by the town,
90 as hereinbefore provided, and subject to a lien for the adjust-
91 ment of matters remaining to be adjusted as hereinafter set
92 out. And if said town shall designate that said property,
93 rights, privileges and franchises, shall be conveyed to any
94 person or persons, or corporation in trust, as aforesaid, it
95 shall also designate the terms of said trust, which shall be in-
96 corporated in said deed. And when said deed or deeds shall
97 be approved, as aforesaid, they shall be delivered to the said
98 town, or said trustee, as the case may be, and said town or
99 said trustee, shall thereupon pay said company the amount
100 determined by said judgment, and interest thereon, less the
101 face value and accrued interest of the pro rata part or pro-
102 portion as the value of said property, rights, privileges and
103 franchises bear to the whole value of bonds so secured by
104 any existing mortgage of the property, rights, privileges and
105 franchises as hereinbefore provided. The pro rata value of
106 such face value and accrued interest of any bonds so secured
107 by any existing mortgage, (which pro rata value thereof the
108 said town is to have deducted from the amount determined
109 by said judgment) is to be estimated by the three commis-
110 sioners provided for in this section, and said commission
111 are thereupon to determine what deduction shall be made
112 therefor from said judgment of the value of the property,
113 rights, privileges and franchises, by them found. But in

114 case it shall be found by said commission that the face value
115 and accrued interest of the said pro rata value of such face
116 value and accrued interest of the bonds so secured by any
117 existing mortgage, is in excess of the amount determined
118 by said judgment as the fair and just value of the property,
119 rights, privileges and franchises, which it was directed to
120 appraise without deducting anything by way of bonds or
121 mortgages thereon, then, and in that case, the said commis-
122 sion is vested with authority and power to make such equit-
123 able adjustment of the amounts to be paid or deducted, by
124 either party, as to said commission may be deemed proper.
125 Nothing in this act, nor any proceedings thereunder, so
126 long as the same are pending, until conveyance is made, as
127 hereinbefore directed, shall prevent or embarrass the Orono
128 Water Company from supplying water in the town of Orono
129 as authorized by its charter, or making any improvements
130 which will inure to its own interests, or the interests of the
131 inhabitants of Orono, nor from receiving water rents, and
132 other dues and tolls, thereafter accruing. After said prop-
133 erty, rights, privileges and franchises as aforesaid are trans-
134 ferred, as hereinbefore provided, the court shall take ac-
135 count of all receipts and expenditures properly had or in-
136 curred by the Orono Water Company, from and after the
137 date on which said property is valued, as aforesaid, and shall
138 enter judgment for the net balance for or against the said
139 Orono Water Company, as the case may be, and shall fix
140 the time within which the same shall be paid. And in the
141 event the same is in favor of the Orono Water Company,
142 and not paid within the time so fixed, the court shall enforce
143 the same against the property, rights, privileges and fran-
144 chises, conveyed as aforesaid by sale, or otherwise, accord-
145 ing to the principles governing courts in equity, with refer-

146 ence to enforcing liens and securities, and by execution
147 against the town, so far as lawfully may be done under the
148 constitution of the state, against such person, or corporation
149 or trustee; and in like manner it shall issue execution against
150 the Orono Water Company, for any balance then due from
151 it. When said conveyance is made, as aforesaid, to said
152 town, or trustee, the town shall thereupon enter into and
153 upon possession and control of the property, rights, privi-
154 leges and franchises therein transferred, subject to be di-
155 vested thereof only upon a failure to pay the said pro rata
156 proportion of the mortgaged indebtedness, as found and de-
157 termined by the said commission hereinbefore provided. Pro-
158 vided, nevertheless, that if the said Orono Water Company
159 shall refuse to accept the price as determined by said judg-
160 ment, less the said pro rata proportion of the said mortgaged
161 indebtedness as found by said commission, or to sell its
162 property therefor, or shall neglect to notify the said town,
163 within the time limited by this section, of their acceptance
164 or refusal, then all other sections of this act shall have the
165 same effect as though this section did not exist.

Sect. 11. For the purpose of raising money to carry out the
2 provisions of this act, the town of Orono may issue its bonds,
3 with interest coupons, in behalf of said town, signed by the
4 municipal officers of said town, and the treasurer of said
5 town, when authorized by a vote of said town, to an amount
6 which, taken in connection with the other indebtedness of
7 the town, will not exceed the amount limited by the consti-
8 tution of Maine. And such bonds shall be signed by the
9 municipal officers of the town and the treasurer of said town,
10 but the coupons need be signed by the treasurer only, and
11 shall be designated and marked "The Orono Water Loan."

Sect. 12. The rates for the supply of water under this act
2 shall be fixed so that all expenses for repairs and manage-

3 ment shall be paid annually, together with interest, and such
4 amounts as the town may determine to be paid annually upon
5 the principal expenditures; unless the Orono Water Com-
6 pany shall decline to accept the price adjudicated to be
7 paid by the town of Orono, and shall elect to enter into com-
8 petition with said town in its water supply, in which case
9 the provisions of this section shall be null and void.

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

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES,

AUGUSTA, March 14, 1901.

Reported by Mr. PUTNAM of Houlton, from Committee on Legal
Affairs, and ordered printed under joint rules.

W. S. COTTON, *Clerk.*