

MAINE STATE LEGISLATURE

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Seventy-first Legislature.

SENATE.

No. 4

STATE OF MAINE.

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

AN ACT to supply towns and cities with Pure Water.

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

Section 1. Any city or town, by its municipal officers, or by
2 a commission, as hereinafter provided, acting for and in
3 behalf of such city or town, is authorized and empowered to
4 take water from any pond or other body of water, or from
5 springs, sufficient for domestic purposes in such city or town,
6 including a sufficient quantity for extinguishing fires, and the
7 supply of hotels, livery stables and laundries, and for sprink-
8 ling streets and lawns within said town as well as for manu-
9 facturing purposes and for supplying shipping in its harbor ;
10 and for the purposes aforesaid, to take and convey to all parts
11 of said city or town or through any adjoining city or town
12 any water as aforesaid, by aqueduct or pipe sunk to any depth
13 desirable for said purposes when so instructed by majority
14 of each town.

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

Sect. 3. For the purpose of carrying out the provisions of
2 this act, such city or town, 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 for
8 roadways to be used as approaches thereto, doing no unneces-
9 sary damage. They may enter upon said lands to make sur-
10 veys and locations, and shall file in the registry of deeds, in
11 the county in which such lands or property taken lies, plans
12 of such locations and land, showing the property taken within
13 said county, and within thirty days thereafter, publish such
14 notice of such taking and filing in some newspaper in each
15 of said counties, wherein the said land is taken, such publica-
16 tion to be continued three weeks successively; and such filing
17 in the registry of deeds shall be in lieu of any other filing
18 now required by law. Such city or town, by its municipal
19 officers, or by said commission, may permit the use, for said
20 purposes, any lands so taken by it, by any person or corpora-
21 tion, with which it has made such a contract as is described
22 in section 2, whereby the such city or town may be entitled

23 to acquire the ownership of any aqueduct or system of water
24 works or any part thereof in such city or town.

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

Sect. 5. Any city or town, by its municipal officers, or said
2 commission, are authorized and empowered to contract with
3 any person or corporation to construct aqueducts, pipes, dams,
4 reservoirs, locks, gates, hydrants, and other necessary struc-
5 tures upon lands so taken, as hereinbefore prescribed. And
6 in case any such corporation is organized to construct any
7 such aqueduct, it is empowered to place all or any part of its
8 capital stock in the name of a trustee, or trustees, and to con-
9 tract that said trustee, or trustees, shall sell and deliver the
10 same to the such city or town in installments from year to
11 year, as may be agreed upon.

Sect. 6. For the purpose of carrying into effect the provi-
2 sions of this act the city government of any city and any town,
3 at a meeting duly called therefor, may, if it so elects, or at
4 any time, or whenever such city or town comes into owner-
5 ship, control or management of system of water works, by
6 building, purchase, or otherwise, elect by ballot three water
7 commissioners, whose duty it shall be to perform all such
8 acts for the town, necessary and convenient for the full opera-

9 tion of this act, as may be prescribed by ordinance, or as may
10 be directed by the municipal officers of said city or town from
11 time to time. The three persons first chosen as aforesaid,
12 shall serve, one for one year, one for two years, one for three
13 years, from the day of the annual March meeting then follow-
14 ing or their election by a city government, as may be desig-
15 nated by the municipal officers of the such city or town; and
16 thereafterwards one commissioner shall be elected by ballot
17 annually at the annual March meeting, to serve for the term
18 of three years. The municipal officers of such city or town
19 may fill any vacancy occurring by death, resignation or other-
20 wise. The chairman of the municipal officers of such town
21 or the mayor of such city for the time being shall be, ex-officio
22 a member of the board of water commissioners. Until such
23 water commissioners are elected, the municipal officers of
24 such town shall perform the duties of the water commis-
25 sioners.

Sect. 7. Said municipal officers of such city or town, 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 such city's or town's water system.

Sect. 8. Any city or town, or said commission, or any cor-
2 poration which either may obtain control directly or indi-
3 rectly, as described in section 2, are authorized, for the pur-
4 poses of carrying into effect the provisions of this act, to
5 dig up and excavate any highway, lay pipe therein, and fill
6 the same under the directions of the road commissioner or
7 such person acting in that behalf.

Sect. 9. Whenever such city or town, 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
5 sources therein named, it shall file in the registry of deeds,
6 in the county in which such source of supply is located, a
7 notice of such taking, describing the size, location and depth
8 of the pipe, or pipes, through which said water is to be taken
9 from said source or sources. Such city or town, 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 easement, or by
13 any other thing done by such city or town, or by said trustee,
14 or by said corporation first named in this section, under the
15 authority of this act, which shall be determined and assessed
16 in the same manner as provided in section 4, for land taken
17 under the provisions of this act.

Sect. 10. Subject to the provisos hereinafter contained,
2 the preceding sections of this act shall not take effect, until
3 such city or town shall, by its municipal officers or by its
4 commission provided for in section 6 of this act, give any
5 water company, supplying such city or town, a written
6 notice offering to buy so much of the property belonging to
7 such company as may be located within the limits of such
8 city or town at the time of the giving of said notice together
9 with such rights and privileges and franchises of said com-
10 pany or companies pertaining to the same, except only cash
11 assets, and shall also thereafter pay, or cause to be paid,
12 therefor, a price to be determined in a manner herein pro-
13 vided. Unless such city or town, by its officers aforesaid,
14 and such company shall agree upon the price to be paid, or
15 upon some other method of determining said price, then
16 within three months after the giving of said notice but not
17 thereafter, either such city or town or such water company
18 may file in the clerk's office of the supreme judicial court,
19 in and for the county where the property of such water

20 company is situated, either in term time or vacation, a
21 request to the court to appoint a commission, for the pur-
22 poses hereinafter set out, to consist of three disinterested
23 persons, none of whom shall be residents of the county in
24 which said city or town is located, at least one of whom
25 shall be a person learned in the law, and at least one a com-
26 petent and skillful engineer, and the other a person well
27 qualified to judge of the value of said property, rights,
28 privileges and franchises. Thereupon, after reasonable
29 notice ordered by the court sitting in said county, or by any
30 judge, either the court, or such judge in vacation, in said
31 county, or elsewhere, may appoint said commission. Such
32 commission shall, as soon as may be, after reasonable notice,
33 hear the parties, their proofs, and arguments, and determine
34 the value of said property, rights, privileges and franchises,
35 except only cash assets as aforesaid. In determining such
36 value the commission shall take into account any existing
37 contracts between the such company and such city or town,
38 the considerations thereof and all acts done thereunder or
39 in pursuance thereof. The commission shall have power
40 to compel the attendance of witnesses, and the production
41 of books and papers pertinent to the issue, and may admin-
42 ister oaths; and any witness or person in charge of such
43 books or papers, refusing to attend or produce the same
44 shall be subject to the same penalties and proceedings, so
45 far as applicable, as witnesses summoned to attend the
46 supreme judicial court. The commission, or a majority
47 thereof, after such hearing, shall report to the court, in said
48 county, in term time, what in its judgment is a fair and just
49 value of the property, rights, privileges, and franchises,
50 which it is directed to appraise, and all other findings which
51 it may have been directed by the court or judge to make,
52 and such papers and proofs taken by it, as the court or any
53 judge thereof has directed, or may from time to time direct

54 to return; and in its report, the commission shall state the
55 date as of which the value aforesaid was fixed. The court
56 may confirm such report, or reject it, or recommit the same,
57 or submit the subject matter thereof to a new commission.
58 The fees and expenses of all the commissioners shall be paid
59 to them, one-half by the city or town and one-half by the
60 water company. All proceedings of the court, or any judge,
61 with reference to any matter herein, raising a question of
62 law, whether in term time or vacation, shall be subject to
63 exceptions in the manner provided by statute. But not-
64 withstanding said exceptions, the case shall proceed at nisi
65 prius, and shall not be marked "law" until after judgment
66 is entered, as hereinafter set forth, unless the court or the
67 judge being of opinion that any question involved is suffi-
68 ciently important, shall otherwise order. When the court
69 confirms the report of the commission, it shall enter judg-
70 ment thereon, and within two calendar months after the
71 entry of such judgment, the city or town shall notify the
72 water company, in writing, either of its willingness to pur-
73 chase said property, so situated within the limits of such
74 city or town, rights, privileges and franchises, at the price
75 determined by said judgment, and to pay therefor, or of its
76 determination to reject the same. And within two calendar
77 months after such notice is received by said companies, they
78 shall notify said town, in writing, that they will or will not,
79 sell their property as aforesaid to said city or town at said
80 price. And if said companies shall accept the offer, they
81 shall forthwith cause deeds of transfer and conveyance to
82 be made, and filed in the clerk's office of the supreme judi-
83 cial court for county, wherein such property is situated,
84 for the inspection of the city or town, and to be approved
85 by the court or any justice thereof, in term time or vacation.
86 Said deeds shall convey all the property, rights, privileges
87 and franchises, except cash assets, then owned by the water

88 company, within such city or town, to such city or town,
89 or to such person or persons or corporation in trust, for the
90 benefit of said town, as the said town may designate, subject
91 to any mortgages pro rata in relation to such rights, privi-
92 leges, property and franchises given to secure the payment
93 of bonds not then due, existing thereon at the time the notice
94 is given by the city or town, as hereinbefore provided, and
95 subject to a lien for the adjustment of matters remaining
96 to be adjusted as hereinafter set out. And if such city or
97 town shall designate that said property, rights, privileges
98 and franchises, shall be conveyed to any person or persons,
99 or corporation, in trust, as aforesaid, it shall also designate
100 the terms of said trust, which shall be incorporated in said
101 deed. And when said deed or deeds shall be approved, as
102 aforesaid, they shall be delivered to such city or town, or
103 said trustee, as the case may be, and such city or town, or
104 said trustee, shall thereupon pay said company the amount
105 determined by said judgment, and interest thereon, which
106 amount shall be in instances when the plant of said water
107 company lies in more than one city or town, less the face
108 value and accrued interest of the pro rata part or proportion
109 as the value of said property, rights, privileges and fran-
110 chises bear to the whole value of bonds so secured by any
111 existing mortgage of the property, rights, privileges and
112 franchises as hereinbefore provided. The pro rata value of
113 such face value and accrued interest of any bonds so secured
114 by any existing mortgage, (which pro rata value thereof
115 the said town is to have deducted from the amount deter-
116 mined by said judgment) is to be estimated by the three
117 commissioners provided for in this section, and said com-
118 mission are thereupon to determine what deduction shall
119 be made therefor from said judgment of the value of the
120 property, rights, privileges and franchises, by them found.
121 But in case it shall be found by said commission that the

122 face value and accrued interest of the said pro rata value
123 of such face value and accrued interest of the bonds so
124 secured by any existing mortgage, is in excess of the
125 amount determined by said judgment as the fair and just
126 value of the property, rights, privileges and franchises,
127 which it was directed to appraise without deducting any-
128 thing by way of bonds or mortgages thereon, then, and in
129 that case, the said commission is vested with authority and
130 power to make such equitable adjustment of the amounts
131 to be paid or deducted, by either party, as to said commis-
132 sion may be deemed proper. Nothing in this act, nor any
133 proceedings thereunder, so long as the same are pending,
134 until conveyance is made, as hereinbefore directed, shall
135 prevent or embarrass the water company from supplying
136 water in such city or town, as authorized by their charter
137 or charters, or making any improvements which will inure
138 to their own interests, or the interests of the inhabitants of
139 such city or town, nor from receiving water rents, and other
140 dues and tolls, thereafter accruing. After said property,
141 rights, privileges and franchises as aforesaid, are trans-
142 ferred, as hereinbefore provided, the court shall take account
143 of all receipts and expenditures properly had or incurred
144 by the water company, from and after the date on which
145 said property is valued, as aforesaid, and shall enter judg-
146 ment for the net balance for or against the said water com-
147 pany, as the case may be, and shall fix the time within which
148 the same shall be paid. And in the event the same is in
149 favor of the water company, and not paid within the time
150 so fixed, the court shall enforce the same against the
151 property, rights, privileges and franchises, conveyed as
152 aforesaid, by sale, or otherwise, according to the principles
153 governing courts in equity, with reference to enforcing liens
154 and securities, and by execution against the town, so far

155 as lawfully may be done under the constitution of the State,
156 against such person, or corporation or trustee; and in like
157 manner it shall issue execution against the water company,
158 for any balance then due from them. When said convey-
159 ance is made, as aforesaid, to such city or town, or trustee,
160 the city or town shall thereupon enter into and upon posses-
161 sion and control of the property, rights, privileges and
162 franchises therein transferred, subject to be divested thereof
163 only upon a failure to pay the said pro rata proportion of
164 the mortgaged indebtedness, as found and determined by
165 the said commission hereinbefore provided. Provided,
166 nevertheless, that if such water company shall refuse to
167 accept the price as determined by said judgment, less the
168 said pro rata proportion of the said mortgaged indebtedness
169 as found by said commission, or to sell their property there-
170 for, or shall neglect to notify such city or town, within the
171 time limited by this section, of their acceptance or refusal,
172 then all other sections of this act shall have the same effect
173 as though this section did not exist.

Section 11. For the purpose of raising money to carry out
2 the provisions of this act, a city or town may issue its bonds,
3 with interest coupons, in behalf of said town, signed by the
4 municipal officers of such city or town, and the treasurer of
5 such city or town, when authorized by a vote of such town
6 or by the city government of each city to an amount which,
7 taken in connection with the other indebtedness of the city
8 or town, will not exceed the amount limited by the consti-
9 tution of Maine. And such bonds shall be signed by the
10 municipal officers of the city or town and the treasurer of
11 said city or town, but the coupons need be signed by the
12 treasurer only, and shall be designated and marked "Water
13 Loan." And for the same purposes the town may sell any
14 stock which it now holds in any corporation.

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 water company shall
6 decline to accept the price adjudicated to be paid by such city
7 or town, and shall elect to enter into competition with said
8 town in its water supply, in which case the provisions of this
9 section shall be null and void.

Sect. 13. Two or more towns or cities, or a city, or cities
2 and a town or towns, may by vote of the annual meetings of
3 the towns and of the city governments of cities, form them-
4 selves into a water district, and such district shall have all
5 the powers for raising money and providing a supply of pure
6 water within said district as one by this act conferred upon
7 cities and towns.

STATE OF MAINE.

IN SENATE, January 15, 1903.

Presented by Mr. STAPLES of Knox, and laid on the table to be printed pending reference, on motion by the same Senator.

KENDALL, M. DUNBAR, *Secretary*.