

MAINE STATE LEGISLATURE

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SEVENTY-SIXTH LEGISLATURE

SENATE

NO. 211

In Senate, Feb. 5, 1913.

Presented by Senator Murphy of Cumberland, and on motion by same Senator laid on the table for printing pending reference to a committee.

W. E. LAWRY, Secretary.

STATE OF MAINE

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

AN ACT to incorporate the Portland Gas District.

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

Section 1. The territory and people constituting that part
2 of the city of Portland exclusive of the islands in Casco
3 Bay shall constitute a public municipal corporation under
4 the name of "Portland Gas District" for the purpose of
5 manufacturing, generating, selling, distributing and supply-
6 ing gas of all kinds for lighting, heating, power, manufact-
7 uring, mechanical and municipal purposes in said city of
8 Portland and to the municipalities, persons and corpora-
9 tions to which the Portland Gas Light Company is supply-
10 ing gas.

Sect. 2. The said district is hereby authorized to lay down
2 and maintain in, under, through, along and across the high-
3 ways, ways, courts, alleys, streets, railroads and bridges in
4 said city any and all necessary pipes and fixtures and to
5 take up, replace and repair all such pipes and fixtures as
6 may be necessary for the objects of its incorporation; and
7 to enter upon and dig up any road, street or way in said
8 city, for the purposes aforesaid; and in a general way to
9 do any other acts or things necessary, convenient or proper
10 to be done for the complete establishment and maintenance
11 of its works and plant; provided, always, that the said dis-
12 trict shall, at its own expense and to the satisfaction of the
13 municipal officers of the said city, without unnecessary de-
14 lay, repair the said highways, streets and ways in every part
15 where they shall be so entered upon and dug up, and restore
16 the covering, pavement and sidewalks thereof respectively.

Sect. 3. The said district for the aforesaid purposes, is
2 hereby authorized to take and hold as for public uses, by
3 purchase or otherwise, any land or interest therein, or water
4 rights necessary for laying and maintaining pipes and fix-
5 tures and for the construction of fixtures, reservoirs, gas
6 holders and all other structures and things requisite, proper
7 and convenient for the manufacture, generating, selling, dis-
8 tribution and supply of gas in said municipalities and for
9 rights of way or road ways to its said reservoirs, pipe lines,
10 gas holders and other fixtures.

Sect. 4. In exercising any right of eminent domain conferred upon it by law, from time to time, or any rights of eminent domain through or under the franchises of any gas company by it acquired, the said district shall file in the office of the county commissioners of Cumberland county and record in the registry of deeds in said county plans of the location of all lands or interests therein or water rights, to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire the property authorized to be taken, and which is described in such location, or the location recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof, and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of ten days from such filing, whereon possession may be had of all said lands or interests therein or water rights so taken but title thereto shall not vest in said district until payment therefor.

Sect. 5. If any person, sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Cumberland county, may have said dam-

5 ages assessed by them; the procedure and all subsequent
6 proceedings and right of appeal thereon shall be had under
7 the same restrictions, conditions and limitations as are or
8 may be by law prescribed in the case of damages by the
9 laying out of highways.

Sect. 6. In case of any crossing of a railroad, unless con-
2 sent is given by the company owning or operating such rail-
3 road as to place, manner and conditions of the crossing,
4 within thirty days after such consent is requested by said
5 district, the railroad commissioners shall determine the place,
6 manner and conditions of such crossing; and all the work
7 within the limits of such railroad location shall be done un-
8 der the supervision and to the satisfaction of such railroad
9 company, but at the expense of the district.

Sect. 7. Said district shall have power to cross any water
2 course, private or public sewer, or to change the direction
3 thereof where necessary for the purposes of its incorpora-
4 tion, but in such manner as not to obstruct or impair the use
5 thereof, and said district shall be liable for any injury caused
6 thereby.

Sect. 8. Said district is hereby authorized to build, con-
2 struct and maintain all fixtures, reservoirs, gas holders and
3 all other things requisite, proper and convenient for the
4 manufacture, distribution and sale of gas in said munici-
5 pality and generally to exercise all incidental powers, rights
6 and privileges necessary for accomplishing the main object
7 and purpose set forth in this act including the right to buy

8 and sell fuel of all kinds and by-products of its works of
9 every name, nature and description whatsoever.

Sect. 9. All the affairs of said district shall be managed
2 **by a board of trustees** composed of three members, who
3 shall be elected by a plurality vote of the legal voters of
4 said gas district, at the election called and held for the choice
5 of a water district trustee on the fourth Monday of May,
6 A. D. 1914, and the call for said election of a water dis-
7 trict trustee shall be so issued and all matters relating to
8 the conduct and returns of said election shall be so varied
9 as to include the election of three gas district trustees. The
10 registration lists of voters prepared by the board of regis-
11 tration in said city for the election of a water district trus-
12 tee shall be used at the election of the said three gas dis-
13 trict trustees. All nominations of candidates so to be voted
14 for shall be made by nomination papers signed in the ag-
15 gregate for each candidate by no less than fifty qualified
16 voters of said gas district. Each voter signing a nomina-
17 tion paper shall make his signature in person and add to it
18 his place of residence and each voter may subscribe to as
19 many nominations as there are trustees to be elected and
20 no more. Such nomination papers before being filed shall
21 be submitted to the city clerk of said city of Portland who
22 shall forthwith certify thereon what number of the signa-
23 tures are names of qualified voters in said gas district; one
24 of the signers of each such separate paper shall swear to
25 the truth thereof and the certificate of such oath shall be

26 annexed to or made upon the nomination papers. Such
27 nomination papers shall be filed with the city clerk at least
28 seven days exclusive of Sundays, previous to the day of
29 said election. With said nomination papers shall also be
30 filed the consent in writing of the person or persons nomi-
31 nated. All nomination papers being filed and being in ap-
32 parent conformity with the foregoing provisions shall be
33 deemed to be valid and if not in apparent conformity they
34 may be seasonably amended under oath. In case any can-
35 didate who has been nominated under the provisions hereof
36 shall die before the day of election or shall withdraw in
37 writing the vacancy may be supplied in the manner herein
38 provided for such nominations. The name so supplied for
39 the vacancy shall if the ballots have not been printed be
40 placed on the ballots instead of the original nomination,
41 or if the ballots have been printed, new ballots containing
42 the new nomination shall if practicable be furnished or
43 slips containing the new nomination shall be printed under
44 the direction of the city clerk, which may be pasted in
45 proper place upon the ballots and thereafter shall become
46 part and parcel of said ballots as if originally printed there-
47 on. The ballots shall be separate and distinct from the
48 ballot for water district trustee and shall contain the names
49 of all candidates so nominated printed in the alphabetical
50 order of their surnames in one column under the heading
51 "For Trustees of the Portland Gas District." Above such
52 heading shall be printed "Vote for three (or such number

53 as may be appropriate) trustees. Make a cross to the right
54 of each name voted for." As many blank spaces shall be
55 left after the names of the candidates as there are trustees
56 to be elected in which the voter may paste on or by writing
57 insert the name or names of any person or persons for
58 whom he desires to vote. In preparing his ballot the voter
59 shall mark a cross (X) against and to the right of such
60 names on said ballots as he desires to vote for not to ex-
61 ceed the number of trustees so to be elected. If the voter
62 shall desire to vote for any person or persons whose name
63 or names are not printed on the ballot he may fill in such
64 name or names in the blank spaces left therefor by writing
65 the same therein or by using a sticker or stickers contain-
66 ing such new name or names. When the voter so adds by
67 writing or by sticker such new name or names his vote for
68 such new name or names shall be counted therefor although
69 he may fail to mark a cross against the same. The result
70 of such election shall be declared by the municipal officers
71 of the city of Portland and due certificate thereof filed with
72 the city clerk thereof. The term of office of the said trus-
73 tees shall begin on the said fourth Monday of May. As
74 soon as convenient after all the members of said board have
75 been so chosen said trustees shall hold a meeting at the
76 city council room in the city of Portland to be called by
77 one of said trustees upon such reasonable notice therefor
78 as he deems proper. They shall organize by the election
79 of a president and clerk, adopt a corporate seal and when

80 necessary may choose a treasurer and all other needful
81 officers and agents for the proper conduct and management
82 of the affairs of said district. They may also ordain and
83 establish such by-laws as are necessary for their own con-
84 venience and the proper management of the affairs of the
85 district. At said first meeting the trustees so elected shall
86 determine by lot the term of office of each trustee so that
87 one trustee shall retire at the end of each period of two
88 years and whenever the term of office of a trustee expires
89 his successor shall be elected by a plurality vote of the
90 gas district and upon nomination made as herein provided
91 for the first election of trustees and for the purpose of
92 such election in such years as the law does not provide
93 for the election of a water district trustee in the city of
94 Portland, a special election shall be called and held on the
95 fourth Monday of May, the same to be called, held and
96 conducted and returns made in the same manner as is pro-
97 vided by section 10 of chapter 433 of the Private and Spe-
98 cial Laws of 1907 relating to the election of water dis-
99 trict trustee in the city of Portland, provided, however, in
100 each year in which a water district trustee is to be elected
101 in said city the election of a gas district trustee shall be
102 held in connection therewith and upon the same day and
103 all matters relating to the calling, holding, conducting and
104 returns of said election shall be so varied as to include the
105 election of a gas district trustee, and provided also, that
106 the names of candidate for gas district trustee shall be

107 placed in the alphabetical order of their surnames upon
108 a separate ballot from the names of candidates for water
109 district trustee. The trustees so elected shall serve for
110 the full term of six years; and in case any vacancy arises
111 in the membership of the board of trustees it shall be
112 filled in like manner for the unexpired term by special
113 election to be called by the municipal officers of the city
114 of Portland. When any trustee ceases to be a resident
115 of the gas district he vacates such office of trustee and
116 the vacancy shall be filled as aforesaid. All such trustees
117 shall be eligible to re-election but no person holding a
118 municipal office either elective or appointive in said city
119 of Portland or holding the office of trustee of the Port-
120 land Water District shall be eligible to nomination or elec-
121 tion as trustee, and no officer, stockholder, employee or
122 attorney of the Portland Gas Light Company shall be eligi-
123 ble to nomination or election as trustee at the election to
124 be held on the fourth Monday of May, 1914. Said trus-
125 tees may procure an office and incur such expenses as may
126 be necessary; each member shall receive in full compen-
127 sation for his services an allowance of four hundred dol-
128 lars per annum. At the close of each fiscal year the trus-
129 tees shall make a detailed report of their doings, of the
130 receipts and expenditures of said gas district, of its finan-
131 cial and physical condition, and of such other matters and
132 things pertaining to said district as shall show the inhab-
133 itants of said district how said trustees are fulfilling the

134 duties and obligations of their trust; such reports to be
135 made and filed with the municipal officers of the city of
136 Portland.

Sect. 10. Said gas district is hereby authorized and em-
2 powered to acquire by purchase or by exercising the right
3 of eminent domain which right is hereby expressly dele-
4 gated to said district for said purpose, the entire plants,
5 properties, rights, privileges and franchises of the Port-
6 land Gas Light Company, except its cash assets, including
7 all stocks, in other companies, lands, waters, water rights,
8 dams, structures, fixtures, reservoirs, gas holders, pipes,
9 machinery, tools and all apparatus and appliances owned
10 by said company whether their aggregate value exceeds or
11 not the value limit named in the charter of said company,
12 and the said Portland Gas Light Company is hereby au-
13 thorized to sell its plants, properties, rights, privileges and
14 franchises to said Portland Gas District; all said plants,
15 properties, rights, privileges and franchises shall be taken
16 subject to all debenture bonds, mortgages, liens and encum-
17 brances, which shall be assumed and paid by said Portland
18 Gas District.

Sect. 11. It shall be the duty of the trustees of said Port-
2 land Gas District to endeavor to agree with said Portland
3 Gas Light Company upon terms of purchase of said prop-
4 erties before exercising the right of eminent domain above
5 granted, and if the said trustees fail to agree with said
6 company upon terms of purchase, then said gas district

7 through its trustees is hereby authorized to take all the
8 plants, properties and franchises of such company sub-
9 ject, however, to all mortgages, liens and encumbrances
10 thereon as stated in section ten as for public uses by a
11 petition therefor filed in the manner hereinafter provided,
12 wherein said company and its mortgagees shall be the par-
13 ties defendant and the certificate of the trustees of said
14 Portland Gas District filed as a part of said petition, to
15 the effect that the trustees have been unable to agree with
16 said gas company upon terms of purchase, shall be con-
17 clusive evidence of such fact, and said gas district through
18 its trustees is hereby authorized on or before July fifteenth,
19 1914, to file a petition in the clerk's office of the supreme
20 judicial court, for the county of Cumberland in term time
21 or vacation, addressed to any justice thereof, who, after
22 notice to said defendant gas company and its mortgagees,
23 shall, after hearing and within sixty days after the filing
24 of said petition, appoint three disinterested appraisers, none
25 of whom shall be residents of the county of Cumberland,
26 one of whom shall be learned in the law, for the purpose
27 of fixing the valuations respectively of the plants, property,
28 rights, privileges and franchises of said defendant gas com-
29 pany described in section ten of this act. The time for
30 so appointing said appraisers may be extended by the court
31 an additional thirty days. Said petition shall not be dis-
32 missed after filing, but may and shall be amended in any
33 manner required to enable the court to make all necessary

34 decrees thereon. At the hearing aforesaid, such justice,
35 upon motion of the petitioner, if the same are not volun-
36 tarily produced may order under proper terms the pro-
37 duction for inspection by the petitioner, of all books and
38 papers pertinent to the issues to be heard by said appraisers.
39 The said appraisers shall have the power of compelling
40 attendance of witnesses and the production of books and
41 papers pertinent to the issue and may administer oaths;
42 and any witnesses or person in charge of such books or
43 papers refusing to attend or to produce the same shall be
44 subject to the same penalties and proceedings, so far as
45 applicable, as witnesses summoned to attend the supreme
46 judicial court. Depositions may be taken as in civil ac-
47 tions. The report of a stenographer, appointed by the ap-
48 praisers, certified by said appraisers as correct, shall be
49 filed with the award to be made by said appraisers and
50 shall be legal evidence of all proceedings so reported. The
51 appraisers so appointed, shall, after due notice and hearing,
52 fix the respective valuations of the plants, properties, rights,
53 privileges and franchises of said defendant gas company
54 as described in section ten of this act at what they are
55 fairly and equitably worth, so that said gas company shall
56 receive just compensation for all the same. The first day
57 of January, nineteen hundred and fifteen, shall be the date
58 as of which the valuations aforesaid shall be fixed, from
59 which date interest on said award at the rate of six per
60 cent per annum shall run and all net rents and profits ac-

61 cruing thereafter shall belong to said gas district. The
62 report of said appraisers or of a majority of them, shall
63 be filed in said clerk's office within six months after their
64 appointment, unless the time is extended by the court for
65 cause. After said report is filed, such single justice, so
66 appointing said appraisers, or in case of his inability to act,
67 then any justice designated for the purpose, by the chief
68 justice, may, after notice and hearing, confirm or reject
69 the same or recommit, if justice so requires, and in case
70 of such rejection or recommittal such justice may order
71 a new hearing and new report thereon. The award of
72 the appraisers shall be conclusive as to valuations. Upon
73 the confirmation of their report, the court so sitting, in
74 term time or vacation, shall thereupon, after hearing, make
75 final decree upon the whole matter, including transfer of
76 the properties and franchises, jurisdiction over which is
77 hereby conferred with the same power to enforce said de-
78 cree as in equity cases. All the costs and expenses arising
79 under such petition and appraisal shall be paid and borne
80 as directed by the court in said final decree. The findings
81 of such justice as to such costs and expenses and their
82 apportionment shall be final. In all other matters the jus-
83 tice so making such final decree, shall, upon request of
84 any of the parties, make separate findings of law and fact.
85 All such findings of fact shall be final, but any party ag-
86 grieved may take exceptions to any rulings of law so made,
87 the same to be accompanied only by such parts of the case

88 as are necessary to a clear understanding of the questions
89 raised thereby. Such exceptions shall be claimed on the
90 docket within ten days after such final decree is signed,
91 entered and filed, and notice thereof has been given by the
92 clerk to the parties or their counsel, and said exceptions so
93 claimed shall be made up, allowed and filed within said time
94 unless further time is granted by the court or by agree-
95 ment of the parties. They shall be entered at the next
96 term of the law court to be held after the filing of such
97 exceptions and there heard unless otherwise agreed, or the
98 law court shall for good cause order a further time for
99 hearing thereon. Upon such hearing the law court may
100 confirm, reverse or modify the decree of the court below,
101 or remand the cause for further proceedings as it seems
102 proper. During the pendency of such exceptions the
103 cause shall remain on the docket of the court below
104 marked "law" and decree shall be entered thereon by a
105 single justice, in term time or in vacation, in accordance
106 with the certificate and opinion of the law court. Before
107 the aforesaid plants, properties, rights, privileges, and
108 franchises, or any of them, are transferred in accord-
109 ance with such final decree, and before the payment there-
110 for, the court sitting in said county of Cumberland, by
111 a single justice thereof, as hereinbefore provided, shall,
112 upon motion of any party, after notice and hearing, take
113 account of all receipts and expenditures properly had and
114 incurred by said gas company belonging to the period from

115 and after January first, nineteen hundred and fifteen, and
116 all net rents and profits accruing thereafter, and shall
117 order the net balance due to any party to be added to
118 or deducted from the amount to be paid under said final
119 decree as the case may be. All findings of law or fact
120 by such single justice at such hearings shall be final. On
121 payment or tender by said gas district of the amounts so
122 fixed and the performance of all other terms and con-
123 ditions so imposed by the court, the entire plants, proper-
124 ties, rights, privileges and franchises of said gas company
125 as described in section ten, shall become vested in said
126 gas district, subject to all liens, mortgages and encum-
127 brances theretofore created by said gas company. After
128 the filing of said petition it shall not be discontinued or
129 withdrawn by said gas district, and the said gas company,
130 may thereafterwards cause said valuations to be made as
131 herein provided, and shall be entitled to appropriate pro-
132 cess to compel said gas district to perform the terms of
133 the final decree and to pay for said plants, properties,
134 rights, privileges and franchises in accordance therewith.
135 If a vacancy occurs at any time in said board of apprais-
136 ers, from any cause, any justice of the supreme judicial
137 court, sitting in said county of Cumberland may, in term
138 time or in vacation, after notice and hearing, appoint a
139 new appraiser or appraisers, and make all such orders for
140 hearing said cause by the appraisers, anew or for any ex-
141 tension of time for making their award, or otherwise, as
142 the circumstances of the case may require.

Sect. 12. All valid contracts now existing between said
2 gas company and any person, corporation or municipal cor-
3 poration, for supplying gas within the cities of Portland,
4 South Portland and Westbrook, shall be assumed and car-
5 ried out by said Portland Gas District.

Sect. 13. For accomplishing the purposes of this act said
2 gas district, through its trustees, is authorized to borrow
3 money temporarily and to issue therefor the negotiable notes
4 of the district, with or without interest, and for the pur-
5 pose of refunding the indebtedness so created, of paying
6 any necessary expenses and liabilities incurred under the
7 provisions of this act, including the expenses incurred in
8 the creation of the district, in acquiring the plants, prop-
9 erty, rights, privileges and franchises of the Portland Gas
10 Light Company by purchase or otherwise, of the purchase
11 or acquisition of the said plants, properties, rights, privi-
12 leges and franchises of the said gas company, of assuming
13 and paying the mortgages, liens and encumbrances thereon,
14 as provided in section ten, of securing reservoir sites, taking
15 lands, paying damages, laying pipes, constructing, main-
16 taining and operating a gas plant or plants with all fixtures,
17 reservoirs, gas holders and other things requisite, proper
18 and convenient for the manufacture, distribution and sale
19 of gas in said municipalities and making renewals, exten-
20 sions, additions and improvements to the same, the said
21 gas district through its trustees, may from time to time,
22 issue bonds of the District and to such amount or amounts

23 as may be necessary, in the judgment of the trustees, there-
24 for; said notes and bonds shall be legal obligations of said
25 district, which is hereby declared to be a quasi-municipal
26 corporation within the meaning of chapter forty-seven of
27 the Revised Statutes, and all the provisions of said section
28 forty-seven shall be applicable thereto; the said notes and
29 bonds shall be legal investment for savings banks. All
30 bonds or notes issued under the provisions of this section
31 shall be denominated Portland Gas District "Bonds" or
32 "Notes," as the case may be.

Section 14. All individuals, firms, and corporations,
2 whether private, public or municipal, shall pay to the treas-
3 urer of said district, the rates established by said board of
4 trustees for the gas used, which rates shall be uniform
5 throughout the district. Said rates shall be so established
6 as to provide revenue for the following purposes:

1. To pay the current expenses of operating and main-
8 taining the gas system, including such sums to be set apart
9 for depreciation, as the trustees may deem expedient.
2. To provide for the payment of the interest on the in-
11 debtedness created or assumed by the district in acquiring
12 or maintaining said gas properties.
3. To provide each year a sum equal to not less than one
14 nor more than three per cent of the entire indebtedness so
15 created or assumed by the district, which sum shall be
16 turned into a "sinking fund" and there kept to provide for
17 the extinguishment of such indebtedness. The money so

18 set aside for the sinking fund shall be maintained separate
19 and distinct from other funds of the district and shall be
20 devoted to the retirement of the obligations of the district
21 incurred in the acquisition or maintenance of said gas prop-
22 erties, or invested in such securities as savings banks are
23 allowed to hold.

Sect. 15. This act shall take effect when approved by a
2 majority vote of the legal voters of that part of the city
3 of Portland constituting the Portland Gas District as here-
4 in provided voting at the regular municipal election to be
5 held in December, 1913, and the warrant for such election
6 shall provide for its submission to the said voters in sub-
7 stantially the following manner, namely: The city clerk
8 shall reduce the subject matter of this act to the following
9 question: "Shall the act to incorporate the Portland Gas
10 District be accepted?" and the voters as aforesaid shall in-
11 dicate by a cross placed over the words "Yes" or "No" their
12 opinion of the same. The result shall be declared by the
13 mayor and aldermen and due certificate thereof filed by the
14 city clerk with the secretary of state.

Sect. 16. Wherever the word "Portland" is used in this
2 act it shall be construed to exclude the islands in Casco Bay
3 and the inhabitants of said islands, and in all elections here-
4 under the board of registration shall exclude from their
5 lists and from the check lists the legal voters that are resi-
6 dents of said islands and all warrants issued to the wards

7 of which said islands are a part shall be varied accordingly,
8 to show that only the voters resident within the territorial
9 limits of the gas district are entitled to vote hereunder.