

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 2

H. P. 6 House of Representatives, Jan. 10, 1929.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. McCart of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-NINE

AN ACT to Incorporate the Eastport Water District.

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

Section 1. The following territory and the people within
2 the same, namely the city of Eastport, shall constitute a
3 public municipal corporation under the name of the East-
4 port Water District for the purpose of supplying the inhab-
5 itants of said municipality with pure water for domestic,
6 industrial, sanitary and municipal purposes.

Sect. 2. The said district for the purpose of its incorpo-
2 ration is hereby authorized to take, hold, divert, use and
3 distribute water from Little River situated in the town of
4 Perry and Boyden's lake in said town of Perry.

Sect. 3. The said district for the purpose of its incorporation hereby is authorized to take and hold, as for public uses, by purchase or otherwise, any land or interest therein or water rights necessary for erecting and maintaining dams, for flowage for power, for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and water shed, for laying and maintaining aqueducts and other structures for taking, distributing, discharging and disposing of water and rights of way or roadways to its source of supplies, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

Sect. 4. The said district is hereby authorized to lay in and through the streets, roads, ways and highways thereof, of the city of Eastport and town of Perry, and across private lands therein, and to maintain, repair and replace all such pipes, aqueducts and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes or aqueducts in any street, road, way or highway it shall cause the same to be done with as little obstruction as practicable to the public travel and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sect. 5. The said district is hereby authorized for the purpose of its incorporation to erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes.

Sect. 6. In exercising any right of eminent domain con-
ferred upon it by law, from time to time, or any right of
eminent domain through or under the franchises of any
water company by it acquired, the said district shall file
in the office of the county commissioners of Washington
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 author-
ized to be taken, and which is described in such location,
or if 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. 7. 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

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

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 majority vote of the legal voters with-
4 in said water district at an election to be specially called
5 and held therefor within thirty days after the approval of
6 this act by the legal voters of said Eastport Water Dis-
7 trict. Such special election shall be called, advertised and
8 conducted according to the law relating to municipal elec-
9 tions in said city of Eastport. The result of such election
10 shall be declared by the municipal officers and due certifi-
11 cate thereof filed with the city clerk thereof. The term of
12 office of the trustees shall be until the third Monday in

13 June in each alternate year after the approval of this act.
14 As soon as convenient after members of said board have
15 been chosen, said trustees shall hold a meeting at the city
16 rooms in said city of Eastport, and organize by the election
17 of a president and clerk, adopt a corporate seal and when
18 necessary may choose a treasurer and all other needful offi-
19 cers and agents for the proper conduct and management of
20 the affairs of said district. They may also ordain and estab-
21 lish such by-laws as are necessary for their own convenience
22 and the proper management of the affairs of said district.
23 At said first meeting the trustees so elected shall determine
24 by lot the term of office of each trustee so that one trustee
25 shall retire each two years and whenever the term of office
26 of a trustee expires his successor shall be elected by a ma-
27 jority vote by the legal voters of said water district, and
28 for this purpose an election of said water district shall be
29 called and held on the third Monday of June of each alter-
30 nate year the same to be called in the manner hereinbefore
31 provided for the first election of trustees. The trustees so
32 elected shall serve the full term of six years; and in case
33 a vacancy arises in the membership of the board of trus-
34 tees it shall be filled in like manner for the unexpired term,
35 by a special election to be called by the municipal officers
36 of the city of Eastport. All such trustees shall be eligible
37 to re-election but no person holding a municipal office in
38 said city of Eastport shall be eligible to election as trustee.
39 Said trustees may procure an office and incur such expenses

40 as may be necessary. Each member shall receive in full
41 compensation of this service an allowance of one hundred
42 dollars per annum or such other sum as may be approved
43 by the municipal officers of the city of Eastport. At the
44 close of each fiscal year the trustees shall make a detailed
45 report of their doings, of the receipts and expenditures of
46 said water district, of its financial and physical condition
47 and of such other matters and things pertaining to said
48 district as shall show the inhabitants of said district how
49 said trustees are fulfilling the duties and obligations of their
50 trust, such reports to be made and filed with the principal
51 officers of said city of Eastport on or before the first day
52 of February of each year. The report of said trustees shall
53 be printed by the municipal officers of the city of Eastport
54 in a separate report.

Sect. 10. Said water district is hereby authorized and
2 empowered to acquire by purchase or by exercise of the
3 right of eminent domain, which right is hereby expressly
4 delegated to said water district for said purposes, the entire
5 plant, property, franchise rights, and privileges now held
6 by the Eastport Water Company and the Perry Equipment
7 Company, for the purpose of supplying water for domes-
8 tic or municipal purposes or both, including all lands, wa-
9 ters, water rights, dams, reservoirs, pipes, machinery, fix-
10 tures, hydrants, tools and all apparatus and appliances owned
11 by said companies, and used or usable in supplying water
12 in said district or in the city of Eastport and the town of

13 Perry, together with all real estate so used or usable. The
14 cash assets of each of said companies are hereby expressly
15 and specifically exempted from the operation of this section.
16 The said companies are hereby authorized to sell and trans-
17 fer their franchises and property to said water district.

Sect. 11. In case the said trustees fail to agree with the
2 aforesaid companies upon terms of purchase on or before
3 September sixteenth, nineteen hundred and twenty-nine,
4 then said water district, through its trustees, is hereby au-
5 thorized to take the plant, property and franchises of the
6 aforesaid companies as authorized in section ten as for pub-
7 lic uses, by petition therefor in the manner provided where-
8 in such companies and their mortgagees shall be the parties
9 defendant. And said water district, through its trustees, is
10 hereby authorized on or before October first, nineteen hun-
11 dred and twenty-nine, to file a petition in the clerk's office
12 of the supreme judicial court, for the county of Washing-
13 ton, in term time or in vacation, addressed to any justice
14 thereof, who, after notice to said defendant companies and
15 their mortgagees, shall after hearing and within thirty days
16 after the filing of said petition appoint three disinterested
17 appraisers, none of whom shall be residents of the county
18 of Washington, one at least of whom shall be learned in
19 the law, for the purpose of fixing the valuation of the plant,
20 property and franchises of said defendant companies as
21 described in section ten. Said petition shall not be dismissed
22 after filing but may and shall be amended in any manner

23 required to enable the court to make all necessary decrees
24 thereon. At the hearing aforesaid, such justice, upon mo-
25 tion of the petitioner, may order the production and filing
26 in court, for the inspection of the petitioner, of all books
27 and papers pertinent to the issue to be heard by said ap-
28 praisers, the terms and conditions of so producing and filing
29 such books and papers to be determined by said justice in
30 his order therefor and to be enforced from time to time as
31 any justice of said supreme judicial court for the county
32 of Washington, for the inspection of the petitioner, the fol-
33 lowing: First, schedules showing the name, residence, street
34 number, if any, and water service of each customer on Sep-
35 tember sixteenth, in the year of our Lord one thousand,
36 nine hundred and twenty-nine, with rate charged therefor;
37 second, copies of all contracts in force on said September
38 sixteenth; third, an itemized statement of the gross income
39 earned during its complete fiscal year and all operating ex-
40 penses and fixed charges paid or incurred during each year
41 and properly chargeable thereto; fourth, a memorandum of
42 all real estate, or interest therein, owned or controlled on
43 said September sixteenth, with such brief description there-
44 of as will reasonably identify the same; fifth, a memoran-
45 dum of all water rights used or owned on said September
46 sixteenth with a brief description thereof and a concise
47 statement of the method of acquiring the same; sixth, du-
48 plicate plans of all structures owned in whole or in part
49 on said September sixteenth, with specifications thereof;

50 seventh, description and specifications of all reservoirs and
51 stand pipes owned on said September sixteenth; eighth, a
52 description of all pipes, service pipes, hydrants, gates, gate
53 boxes, valves, shut-off boxes, meters, fixtures and machin-
54 ery, and all the physical elements in such water system,
55 giving in detail all quantities, sizes, lengths, specifying the
56 streets, roads or ways where situated; ninth, an itemized
57 list of all tools, apparatus and appliances used or usable
58 in supplying water on said September sixteenth. Such or-
59 ders may be enforced from time to time by any justice of
60 said supreme judicial court in term time or in vacation,
61 upon motion of either party, as such justice may deem rea-
62 sonable and proper in the premises. At such hearing the
63 justice then sitting may, upon motion of the petitioner, make
64 all such decrees as he deems reasonable and proper to en-
65 able the petitioner, through its servants and employees, to
66 ascertain the condition of the mains and pipes of the de-
67 fendant companies, internally and externally, all work con-
68 nected therewith to be in the presence of the agents of the
69 aforesaid companies, but wholly at the expense of said wa-
70 ter district, said decree to fix the number of such exami-
71 nations and to impose such conditions as may to the court
72 seem just and proper in the premises. The said appraisers
73 shall have the power of compelling attendance of witnesses
74 and the production of books and papers pertinent to the
75 issue and may administer oaths; and any witness or person
76 in charge of such books or papers refusing to attend or to

77 produce the same shall be subject to the same penalties and
78 proceedings, so far as applicable, as witnesses summoned
79 to attend the supreme judicial court. Depositions may be
80 taken as in civil actions. The said appraisers may appoint
81 a sufficient number of stenographers to enable a full report
82 of the proceedings of each day to be in readiness for use
83 the following day, each of said appraisers to so have one
84 copy thereof, and the parties to receive such number of
85 copies as the appraisers may deem necessary. The com-
86 pensation and expenses of said stenographers shall be taxed
87 and allowed by the appraisers and be paid and borne as
88 hereinafter provided. Their reports, certified by said ap-
89 praisers as correct, shall be filed with the award to be made
90 by said appraisers and shall be legal evidence of all pro-
91 ceedings so reported. They shall make full report as re-
92 quired in trials had in the supreme judicial court. The ap-
93 praisers so appointed shall, after due notice and hearing,
94 fix the valuation of the plant, property and franchises of
95 said defendant companies at what they are fairly and equi-
96 tably worth, so that said defendant companies shall receive
97 just compensation for all the same. The first day of No-
98 vember, nineteen hundred and twenty-nine shall be the date
99 as of which the valuation aforesaid shall be fixed, from
100 which date interest on said award at the rate of five per
101 cent per annum shall run and all net rents and profits
102 accruing thereafter shall belong to said water district. The
103 report of said appraisers, or of a majority of them shall

104 be filed in said clerk's office within three months after
105 their appointment, but, if at the expiration of said three
106 months the hearing before said appraisers should then be
107 in progress and unfinished, their report may be so filed
108 within thirty days after close of said hearing. After said
109 report is filed, such single justice, so appointing said ap-
110 praisers or in case of his inability to act, then any justice
111 designated for the purpose by the chief justice, may, after
112 notice and hearing, confirm or reject the same or re-
113 commit if justice so requires, and in case of such rejec-
114 tion or recommittal such justice may fix the times for new
115 hearings and new report thereon. The award of the ap-
116 praisers shall be conclusive as to valuations. Upon con-
117 firmation of their report, the court so sitting, in term time
118 or in vacation, shall thereupon, after hearing, make final
119 decree upon the whole matter, including the transfer of
120 the properties and franchises, jurisdiction over which is
121 hereby conferred with the same power to enforce said
122 decree as in equity cases. All the costs and expenses aris-
123 ing under such petition and appraisal shall be paid and
124 borne as directed by the court in said final decree. The
125 findings of such justice as to such costs and expenses and
126 their apportionment shall be final. In all other matters
127 the justice so making such final decree shall, upon request
128 of any of the parties, make separate findings of law and
129 fact. All such findings of fact shall be final, but any party
130 aggrieved may take exceptions to any rulings of law so

131 made, the same to be accompanied by only such parts of
132 the case as are necessary to a clear understanding of the
133 questions raised thereby. Such exceptions shall be claimed
134 on the docket within ten days after such final decree is
135 signed, entered and filed, and notice thereof has been given
136 by the clerk to the parties or their counsel, and said ex-
137 ceptions so claimed shall be made up, allowed and filed
138 within said time unless further time is granted by the court
139 or by agreement of the parties. They shall be entered at
140 the next term of the law court to be held after the filing
141 of such exceptions and there heard unless otherwise agreed,
142 or the law shall for good cause order a further time for
143 hearing thereon. Upon such hearing the law court may
144 confirm, reverse or modify the decree of the court below
145 or remand the cause for further proceedings, as it seems
146 proper. During the pendency of such exceptions the cause
147 shall remain on the docket of the court below, marked
148 "law" and decree shall be entered thereon by a single jus-
149 tice, in term time or in vacation, in accordance with the
150 certificate and opinion of the law court. Before the afore-
151 said plant, property and franchises are transferred in ac-
152 cordance with such final decree, and before the payment
153 therefor, the court sitting in said county of Washington,
154 by a single justice thereof, as hereinbefore provided, shall,
155 upon motion of any party, after notice and hearing, take
156 account of all receipts and expenditures properly had and
157 incurred by said companies belonging to the period from

158 and after November first, nineteen hundred and twenty-
159 nine, and all net rents and profits accruing thereafter, and
160 shall order the net balance due to any party to be added
161 to or deducted from the amount to be paid under such
162 final decree, as the case may be. All findings of law or
163 fact by such single justice at such hearings shall be final.
164 The amount to be paid for the plant of each of the afore-
165 said companies shall be paid to the trustee of the more-
166 gage of each respective company and by such trustee dis-
167 tributed pro rata upon the outstanding bonds secured by
168 such mortgage, and any balance of said amount shall be
169 paid by said trustee to its respective company. On pay-
170 ment of tender by said water district of the amount so
171 fixed and the performance of all other terms and condi-
172 tions so imposed by the court, the entire plants, properties
173 and franchises of said defendant companies as described
174 in section ten shall become vested in said water district
175 and be free from all liens, mortgages and incumbrances,
176 theretofore created. After the filing of said petition it
177 shall not be discontinued or withdrawn by said water dis-
178 trict, and the companies may thereafterwards cause said
179 valuation to be made as herein provided, and shall be en-
180 titled to appropriate process to compel said water district
181 to perform the terms of the final decree and to pay for
182 said plants, properties and franchises in accordance there-
183 with. If a vacancy occurs at any time in said board of
184 appraisers, from any cause, any justice of the supreme

185 judicial court, sitting in said county of Washington, may,
186 in term time or in vacation, after notice and hearing, ap-
187 point a new appraiser or appraisers, and make all such
188 orders for hearing said cause by the appraisers anew or
189 for any extension of time for making their award, or
190 otherwise, as the circumstances of the case may require.

Sect. 12. All valid contracts made in good faith, now
2 existing between said defendant companies and any person
3 or corporation for supplying water within the city of East-
4 port named in section one shall be assumed and carried out
5 by said Eastport water district.

Sect. 13. For accomplishing the purposes of this act, said
2 water district, through its trustees, is authorized to borrow
3 money temporarily and to issue therefor the interest-bear-
4 ing negotiable notes of the district and for the purpose of
5 paying or 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 property and
9 franchises of the Eastport Water Company and the Perry
10 Equipment Company, by purchase or otherwise, or in the
11 purchase or acquisition of the property and franchises of
12 said defendant companies, of securing sources of supply,
13 taking water and lands, paying damages, laying pipes, con-
14 structing, maintaining and operating a water plant, and
15 making renewals, extensions, additions and improvements
16 to the same, the said water district, through its trustees,

17 may from time to time issue bonds of the district to an
18 amount or amounts necessary in the judgment of the trus-
19 tees therefor. Said notes and bonds shall be legal obliga-
20 tions of the water district, which is hereby declared to be
21 a quasi municipal corporation within the meaning of sec-
22 tion one hundred and five of chapter fifty-one of the revised
23 statutes, and all the provisions of said section shall be ap-
24 plicable thereto. The said notes and bonds shall be legal
25 investments for savings banks.

Sect. 14. The property of said district shall be exempt
2 from all taxation in the town or towns where said water
3 district is located.

Sect. 15. All individuals, firms and corporations, whether
2 private, public or municipal, shall pay to the treasurer of
3 said district the rates established by said board of trustees
4 for the water used by them, and said rates shall be uniform
5 within the territory supplied by the district. Said rates shall
6 be so established as to provide revenue for the following
7 purposes:

1. To pay the current expenses for operating and main-
2 taining the water system.

2. To provide for the payment of the interest on the in-
2 debtedness created by the district.

3. To provide each year a sum equal to not less than one-
2 half of one per cent nor more than five per cent of the en-
3 tire indebtedness created by the district, which sum shall
4 be turned into a sinking fund and there kept to provide for

5 the extinguishment of said indebtedness. The money set
6 aside for the sinking fund shall be devoted to the retire-
7 ment of the obligations of the district or invested in such
8 securities as savings banks are allowed to hold.

Sect. 16. All incidental powers, rights and privileges
2 necessary to the accomplishment of the main object herein
3 set forth are granted to the public municipal corporation
4 hereby created.

Sect. 17. This act so far as it includes the territory and
2 people constituting the Eastport Water District, as provided
3 in section one thereof, shall not take effect as to said East-
4 port, unless accepted and approved by a majority vote of
5 the legal voters of said city voting at an election to be spe-
6 cially called and held for the purpose on July twenty-second,
7 nineteen hundred and twenty-nine. Such special election
8 shall be called, advertised and conducted according to the
9 law relating to municipal elections. The city clerk shall
10 reduce the subject matter of this act to the following ques-
11 tion: "Shall the act to incorporate the Eastport Water Dis-
12 trict be accepted?" and the voters shall indicate by the words
13 "yes" or "no" their opinion of the same. The result in said
14 city of Eastport shall be declared by the municipal officers
15 and due certificate thereof filed by the city clerk with the
16 secretary of state.

Sect. 18. This act subject to the provision of section sev-
2 enten shall take effect when approved by a majority vote
3 of the legal voters of said Eastport Water District voting

4 at an election to be specially called and held for the pur-
5 pose on July twenty-second, nineteen hundred and twenty-
6 nine, such special election shall be called, advertised and
7 conducted according to the law relating to municipal elec-
8 tions. The city clerk shall reduce the subject matter of
9 this act to the following question: "Shall the act to incor-
10 porate the Eastport Water District be accepted?" and the
11 voters shall indicate by the words "yes" or "no" their opin-
12 ion of the same. The result shall be declared by the mu-
13 nicipal officers and due certificate filed by the city clerk with
14 the secretary of state. In case this act is not approved by
15 a majority vote of the legal voters of said Eastport Water
16 District at its first meeting on July twenty-second, nineteen
17 hundred and twenty-nine, it may be approved at any sub-
18 sequent meeting held on the third Monday in July, nineteen
19 hundred and thirty, by a majority of voters in said water
20 district, said subsequent meeting to be called, advertised and
21 conducted in the same manner as the meeting on July twen-
22 ty-second, nineteen hundred and twenty-nine.

Sect. 19. If said water district shall fail to acquire by
2 purchase or by the exercise of the right of eminent domain
3 as in this act provided, the plant, properties, franchise, rights
4 and privileges owned by the Eastport Water Company and
5 the Perry Equipment Company and used or usable in sup-
6 plying water in the city of Eastport, then this act shall be
7 come null and void.

Sect. 20. This act shall take effect in ninety days after

2 the final adjournment of the legislature, so far as necessary
3 to empower the calling and holding of the elections author-
4 ized in section seventeen herein provided for.

Sect. 21. Nothing herein contained is intended to repeal,
2 or shall be construed as repealing, the whole, or any part
3 of any existing statute, and all the rights and duties herein
4 mentioned shall be exercised and performed in accordance
5 with all the applicable provisions of chapter fifty-five of the
6 revised statutes, and all acts amendatory thereof or addi-
7 tional thereto.