

MAINE STATE LEGISLATURE

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NEW DRAFT

EIGHTY-FOURTH LEGISLATURE

House Document

No. 365

H. P. 1167. House of Representatives, Feb. 14, 1929.

Reported by Mr. Cart from Committee on Judiciary. Laid on the table for printing, under joint rules.

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 and the inhabitants of the town
6 of Perry with pure water for domestic, industrial, sanitary
7 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 incorpo-
2 ration hereby is authorized to take and hold, as for public
3 uses, by purchase or otherwise, any land or interest therein
4 or water rights necessary for erecting and maintaining dams,
5 for flowage for power, for pumping its water supply through
6 its mains, for reservoirs, for preserving the purity of the
7 water and water shed, for laying and maintaining aque-
8 ducts and other structures for taking, distributing, discharg-
9 ing and disposing of water and rights of way or roadways
10 to its source of supplies, dams, power stations, reservoirs,
11 mains, aqueducts, structures and lands.

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

Sect. 5. The said district is hereby authorized for the
2 purpose of its incorporation to erect and maintain all dams,

3 reservoirs and structures necessary and convenient for its
4 corporate purposes.

Sect. 6. In exercising any right of eminent domain con-
2 ferred upon it by law, from time to time, or any right of
3 eminent domain through or under the franchises of any
4 water company by it acquired, the said district shall file in
5 the office of the county commissioners of Washington coun-
6 ty and record in the registry of deeds in said county plans
7 of the location of all lands or interests therein or water
8 rights to be taken, with an appropriate description and the
9 names of the owners thereof, if known. When for any
10 reason the district fails to acquire the property authorized
11 to be taken, and which is described in such location, or if
12 the location recorded is defective or uncertain, it may at
13 any time correct and perfect such location and file a new
14 description thereof, and in such case the district is liable
15 in damages only for property for which the owner had not
16 previously been paid, to be assessed as of the time of the
17 original taking and the district shall not be liable for any
18 acts which would have been justified if the original taking
19 had been lawful. No entry shall be made on any private
20 lands, except to make surveys, until the expiration of ten
21 days from such filing, whereon possession may be had of
22 all said lands or interests therein or water rights so taken,
23 but title thereto shall not vest in said district until payment
24 therefor.

Sect. 7. If any person sustaining damages by any taking

2 as aforesaid, shall not agree with said district upon the
3 sum to be paid therefor, either party, upon petition to the
4 county commissioners of Washington county, may have said
5 damages 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 law prescribed in the case of damages by the laying
9 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 within
4 said water district at an election to be specially called and
5 held therefor within thirty days after the approval of this
6 act by the legal voters of said Eastport Water District.
7 Such special election shall be called, advertised and con-
8 ducted according to the law relating to municipal elections
9 in said city of Eastport. The result of such election shall
10 be declared by the municipal officers and due certificate

11 thereof filed with the city clerk thereof. The term of office
12 of the trustees shall be until the third Monday in June in
13 each alternate year after the approval of this act. As soon
14 as convenient after members of said board have been chosen.
15 said trustees shall hold a meeting at the city rooms in said
16 city of Eastport, and organize by the election of a presi-
17 dent and clerk, adopt a corporate seal and when necessary
18 may choose a treasurer and all other needful officers and
19 agents for the proper conduct and management of the af-
20 fairs of said district. They may also ordain and establish
21 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 expense
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. At the close of each fiscal year the
43 trustees shall make a detailed report of their doings, of the
44 receipts and expenditures of said water district, of its finan-
45 cial and physical condition and of such other matters and
46 things pertaining to said district as shall show the inhab-
47 itants of said district how said trustees are fulfilling the
48 duties and obligations of their trust, such reports to be
49 made and filed with the principal officers of said city of
50 Eastport on or before the first day of February of each
51 year. The report of said trustees shall be printed by the
52 municipal officers of the city of Eastport in a separate
53 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 en-
5 tire plant, property, franchise rights, and privileges now
6 held by the Eastport Water Company and the Perry Equip-
7 ment Company, or their respective successors in title for
8 the purpose of supplying water for domestic, industrial,
9 sanitary or municipal purposes, including all lands, waters,
10 water rights, dams, reservoirs, pipes, machinery, fixtures,
11 hydrants, tools and all apparatus and appliances owned by

12 said companies, and used or usable in supplying water in
13 said district or in the city of Eastport and the town of
14 Perry, together with all real estate so used or usable whether
15 their aggregate value exceeds or not the value limit named
16 in the charters of said companies. The cash assets of each
17 of said companies are hereby expressly and specifically ex-
18 empted from the operation of this section. The said com-
19 panies, or their successors in title, are hereby authorized
20 to sell and transfer their franchises and property to said
21 water district.

Sect. 11. In case the said trustees fail to agree with the
2 aforesaid companies or their successors in title upon terms
3 of purchase on or before September sixteenth, nineteen
4 hundred and twenty-nine, then said water district, through
5 its trustees, is hereby authorized to take the plant, property
6 and franchises of the aforesaid companies as authorized
7 in section ten as for public uses, by petition therefor in
8 the manner provided wherein such companies and their
9 mortgagees shall be the parties defendant. And said water
10 district, through its trustees, is hereby authorized on or
11 before October first, nineteen hundred and twenty-nine, to
12 file a petition in the clerk's office of the supreme judicial
13 court, for the county of Washington, in term time or in
14 vacation, addressed to any justice thereof, who, after no-
15 tice to said defendant companies and their mortgagees, shall
16 after hearing and within thirty days after the filing of said
17 petition appoint three disinterested appraisers, none of whom

18 shall be residents of the county of Washington, one at least
19 of whom shall be learned in the law, for the purpose of
20 fixing the valuation of the plant, property and franchises
21 of said defendant companies as described in section ten.
22 Said petition shall not be dismissed after filing but may
23 and shall be amended in any manner required to enable
24 the court to make all necessary decrees thereon. At the
25 hearing aforesaid, such justice, upon motion of the peti-
26 tioner, may order the production and filing in court, for
27 the inspection of the petitioner, of all books and papers
28 pertinent to the issue to be heard by said appraisers, the
29 terms and conditions of so producing and filing such books
30 and papers to be determined by said justice in his order
31 therefor and to be enforced from time to time as any jus-
32 tice of said supreme judicial court in term time or in vaca-
33 tion, upon motion of either party, may deem reasonable
34 and proper in the premises. At such hearing such justice,
35 upon motion of the petitioner, may fix a time at which the
36 said defendant companies shall file in the clerk's office of
37 the supreme judicial court for the county of Washington,
38 for the inspection of the petitioner, the following: First,
39 schedules showing the name, residence, street number, if
40 any, and water service of each customer on September six-
41 teenth, in the year of our Lord, one thousand nine hundred
42 and twenty-nine, with rate charged therefor; second, copies
43 of all contracts in force on said September sixteenth; third,
44 an itemized statement of the gross income earned during

45 its complete fiscal year and all operating expenses and fixed
46 charges paid or incurred during each year and properly
47 chargeable thereto; fourth, a memorandum of all real es-
48 tate, or interest therein, owned or controlled on said Sep-
49 tember sixteenth, with such brief description thereof as
50 will reasonably identify the same; fifth, a memorandum
51 of all water rights used or owned on said September six-
52 teenth with a brief description thereof and a concise state-
53 ment of the method of acquiring the same; sixth, duplicate
54 plans of all structures owned in whole or in part on said
55 September sixteenth, with specifications thereof; seventh,
56 description and specifications of all reservoirs and stand
57 pipes owned on said September sixteenth; eighth, a descrip-
58 tion of all pipes, service pipes, hydrants, gates, gate boxes,
59 valves, shut-off boxes, meters, fixtures and machinery, and
60 all the physical elements in such water system, giving in
61 detail all quantities, sizes, lengths, specifying the streets,
62 roads or ways where situated; ninth, an itemized list of all
63 tools, apparatus and appliances used or usable in supply-
64 ing water on said September sixteenth. Such orders may
65 be enforced from time to time by any justice of said su-
66 preme judicial court in term time or in vacation, upon mo-
67 tion of either party, as such justice may deem reasonable
68 and proper in the premises. At such hearing the justice
69 then sitting may, upon motion of the petitioner, make all
70 such decrees as he deems reasonable and proper to enable
71 the petitioner, through its servants and employees, to as-

72 certain the condition of the mains and pipes of the defend-
73 ant companies, internally and externally, all work connect-
74 ed therewith to be in the presence of agents of the afore-
75 said companies, but wholly at the expense of said water
76 district, said decree to fix the number of such examina-
77 tions and to impose such conditions as may to the court
78 seem just and proper in the premises. The said appraisers
79 shall have the power of compelling attendance of witnesses
80 and the production of books and papers pertinent to the
81 issue and may administer oaths; and any witness or person
82 in charge of such books or papers refusing to attend or
83 to produce the same shall be subject to the same penalties
84 and proceedings, so far as applicable, as witnesses sum-
85 moned to attend the supreme judicial court. Depositions
86 may be taken as in civil actions. The said appraisers may
87 appoint a sufficient number of stenographers to enable a
88 full report of the proceedings of each day to be in readi-
89 ness for use the following day, each of said appraisers to
90 so have one copy thereof, and the parties to receive such
91 number of copies as the appraisers may deem necessary.
92 The compensation and expenses of said stenographers shall
93 be taxed and allowed by the appraisers and be paid and
94 borne as hereinafter provided. Their reports, certified by
95 said appraisers as correct, shall be filed with the award to
96 be made by said appraisers and shall be legal evidence of
97 all proceedings so reported. They shall make full report
98 as required in trials had in the supreme judicial court. The

99 appraisers so appointed shall, after due notice, and hearing,
100 fix the valuation of the plant, property and franchises of
101 said defendant companies at what they are fairly and
102 equitably worth, so that said defendant companies shall
103 receive just compensation for all the same. The first day
104 of November, nineteen hundred and twenty-nine shall be
105 the date as of which the valuation aforesaid shall be fixed,
106 from which date interest on said award at the rate of six
107 per cent per annum shall run and all net rents and profits
108 accruing thereafter shall belong to said water district. The
109 report of said appraisers, or of a majority of them shall
110 be filed in said clerk's office within three months after their
111 appointment, but, if at the expiration of said three months
112 the hearing before said appraisers should then be in prog-
113 ress and unfinished, their report may be so filed within
114 thirty days after close of said hearing. After said report
115 is filed, such single justice, so appointing said appraisers
116 or in case of his inability to act, then any justice designated
117 for the purpose by the chief justice, may, after notice and
118 hearing, confirm or reject the same or recommit if justice
119 so requires, and in case of such rejection or recommital
120 such justice may fix the times for new hearings and
121 new report thereon. The award of the appraisers shall
122 be conclusive as to valuations. Upon confirmation of
123 their report, the court so sitting, in term time or
124 in vacation, shall thereupon, after hearing, make final
125 decree upon the whole matter, including the transfer of

126 the properties and franchises, jurisdiction over which is
127 hereby conferred with the same power to enforce said de-
128 cree as in equity cases. All the costs and expenses aris-
129 ing under such petition and appraisal shall be paid and
130 borne as directed by the court in said final decree. The
131 findings of such justice as to such costs and expenses and
132 their apportionment shall be final. In all other matters
133 the justice so making such final decree shall, upon request
134 of any of the parties, make separate findings of law and
135 fact. All such findings of fact shall be final, but any party
136 aggrieved may take exceptions to any rulings of law so
137 made, the same to be accompanied by only such parts of
138 the case as are necessary to a clear understanding of the
139 questions raised thereby. Such exceptions shall be
140 claimed on the docket within ten days after such final decree
141 is signed, entered and filed, and notice thereof has been
142 given by the clerk to the parties or their counsel, and said
143 exceptions so claimed shall be made up, allowed and filed
144 within said time unless further time is granted by the
145 court or by agreement of the parties. They shall be en-
146 tered at the next term of the law court to be held after
147 the filing of such exceptions and there heard unless other-
148 wise agreed, or the law court shall for good cause order
149 a further time for hearing thereon. Upon such hearing
150 the law court may confirm, reverse or modify the decree
151 of the court below or remand the cause for further pro-
152 ceedings, as it seems proper. During the pendency of

153 such exceptions the cause shall remain on the docket of
154 the court below, marked "Law" and decree shall be en-
155 tered thereon by a single justice, in term time or in vaca-
156 tion, in accordance with the certificate and opinion of the
157 law court. Before the aforesaid plant, property and
158 franchises are transferred in accordance with such final
159 decree, and before the payment therefor, the court sitting
160 in said county of Washington, by a single justice thereof,
161 as hereinbefore provided, shall, upon motion of any party,
162 after notice and hearing, take account of all receipts and
163 expenditures properly had and incurred by said companies
164 belonging to the period from and after November first,
165 nineteen hundred and twenty-nine, and all net rents and
166 profits accruing thereafter, and shall order the net balance
167 due to any party to be added to or deducted from the
168 amount to be paid under such final decree, as the case may
169 be. All findings of law or fact by such single justice at
170 such hearings shall be final. The amount to be paid for
171 the plant of each of the aforesaid companies shall be paid
172 to the trustee of the mortgage of each respective company
173 and by such trustee distributed pro rata upon the outstand-
174 ing bonds secured by such mortgage, and any balance of
175 said amount shall be paid by said trustee to its respective
176 company. On payment or tender by said water district
177 of the amount so fixed and the performance of all other
178 terms and conditions so imposed by the court, the entire
179 plants, properties and franchises of said defendant com-

180 panies as described in section ten shall become vested in
181 said water district and be free from all liens, mortgages
182 and incumbrances, theretofore created. After the filing
183 of said petition it shall not be discontinued or withdrawn
184 by said water district, and the companies may thereafter-
185 wards cause said valuation to be made as herein provided,
186 and shall be entitled to appropriate process to compel said
187 water district to perform the terms of the final decree and
188 to pay for said plants, properties, and franchises in ac-
189 cordance therewith. If a vacancy occurs at any time in
190 said board of appraisers, from any cause, any justice of
191 the supreme judicial court, sitting in said county of Wash-
192 ington, may, in term time or in vacation, after notice and
193 hearing, appoint a new appraiser or appraisers, and make
194 all such orders for hearing said cause by the appraisers
195 anew or for any extention of time for making their award,
196 or 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 or the town of Perry named in section one shall be
5 assumed and carried out 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, or their respective successors in title,
11 by purchase or otherwise, or in the purchase or acquisition
12 of property and franchises of said defendant companies, of
13 securing sources of supply, taking water and lands, paying
14 damages, laying pipes, constructing, maintaining and operat-
15 ing a water plant, and making renewals, extensions, addi-
16 tions and improvements to the same, the said water dis-
17 trict, through its trustees may from time to time issue bonds
18 of the district to an amount or amounts necessary in the
19 judgment of the trustees therefor. Said notes and bonds
20 shall be legal obligations of the water district, which is
21 hereby declared to be a quasi municipal corporation within
22 the meaning of section one hundred and five of chapter
23 fifty-one of the revised statutes, and all the provisions of
24 said section shall be applicable thereto. The said notes
25 and bonds shall be legal 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 supplies 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 saving 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 shall take effect when approved by a
2 majority vote of the legal voters of said Eastport Water
3 District voting at an election to be specially called and held
4 for the purpose on July twenty-second, nineteen hundred
5 and twenty-nine, such special election shall be called, ad-
6 vertised and conducted according to the law relating to mu-
7 nicipal elections. The city clerk shall reduce the subject
8 matter of this act to the following question: "Shall the act

9 to incorporate the Eastport Water District be accepted?"
10 and the voters shall indicate by placing a cross against the
11 word "yes" or "no" their opinion of the same. The result
12 shall be declared by the municipal officers and due certifi-
13 cate filed by the city clerk with the secretary of state. In
14 case this act is not approved by a majority vote of the legal
15 voters of said Eastport Water District at its first meeting
16 on July twenty-second, nineteen hundred and twenty-nine,
17 it may be approved at any subsequent meeting held on the
18 third Monday in July, nineteen hundred and thirty, by a
19 majority of voters in said water district, said subsequent
20 meeting to be called, advertised and conducted in the same
21 manner as the meeting on July twenty-second, nineteen hun-
22 dred and twenty-nine.

Sect. 18. 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 useable in sup-
6 plying water in the city of Eastport, then this act shall be-
7 come null and void.

Sect. 19. 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 auth-
4 orized in section seventeen herein provided for.

Sect. 20. Wherever reference is made in this act to the
2 Eastport Water Company or to the Perry Equipment Com-

3 pany it shall be construed to include their respective suc-
4 cessors or assigns.

Sect. 21. Nothing herein contained is intended to repeal,
2 or shall be construed as repealing, the whole, or any part of
3 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.