

MAINE STATE LEGISLATURE

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EIGHTY-FIFTH LEGISLATURE

Legislative Document

No. 222

H. P. 593

House of Representatives, Jan. 28, 1931.

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

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Hathaway of Milo.

STATE OF MAINE

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

AN ACT to Amend An Act to Incorporate the Guilford Water
District.

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

Section 1. Section two of said chapter two hundred one as amended by section two of chapter eighty-one of the private and special laws of nineteen hundred twenty-nine, is hereby further amended by inserting at the end of said section two, as amended, after the word "district" the words 'inclusive of the right to purchase by the terms of and in accordance with a written contract dated August ten, nineteen hundred ten, by and between said Guilford Water Company and the inhabitants of Guilford, and a written contract dated September seven, nineteen hundred ten, by and between the inhabitants of Sangerville and Charles N. Taylor, which said contracts were authorized at town meetings of said respective towns whose acts and doings and records in such respects are hereby ratified and approved'; so that said section as amended shall read as follows :

'Sect. 2. **Rights of Sangerville Water Company included.** Said water district is hereby authorized and empowered to acquire by purchase the entire land, property and franchises, rights and privileges now held by the Guilford Water Company and the Sangerville Water Supply Company within said

district, including all lands, rights of way, waters, water rights, dams, reservoirs, standpipes, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said Guilford Water Company and by said Sangerville Water Supply Company used or usable in supplying water in said district, inclusive of the right to purchase by the terms of and in accordance with a written contract dated August ten, nineteen hundred ten, by and between said Guilford Water Company and the inhabitants of Guilford, and a written contract dated September seven, nineteen hundred ten, by and between the inhabitants of Sangerville and Charles N. Taylor, which said contracts were authorized at town meetings of said respective towns whose acts and doings and records in such respects are hereby ratified and approved.

Sect. 2. Section six of said chapter two hundred one of the private and special laws of nineteen hundred eleven as amended by section five of chapter eighty-one of the private and special laws of nineteen hundred twenty-nine is hereby amended by striking out in the forty-ninth line thereof the words "January in the year nineteen hundred and thirty" and inserting in place thereof 'such month as said presiding justice may specify', and by striking out in the fifty-first line the words "January, nineteen hundred and thirty", and inserting in place thereof the words: 'such month as the presiding justice may specify', and by striking out in the fifty-third line thereof the words, "said January first", and inserting in place thereof the words: 'the first day of such month as said presiding justice may specify', and by striking out in the fifty-sixth line thereof the words "day of January" and inserting in place thereof the words: 'day of such month as said presiding justice may specify', and by striking out in the sixty-third line thereof the words, "day of January", and inserting in place thereof: 'day of such month as said presiding justice may specify', and by striking out in the eighty-fourth line thereof the words, "January, nineteen hundred and thirty", and inserting in place thereof the words: 'such month as the presiding justice may specify', and by striking out in the one hundred nineteenth line thereof the word, "January", and inserting in place thereof the words, 'such month as the presiding justice may specify', so that said section as amended shall read as follows:

'Sect. 6. Acquisitions by right of eminent domain; filing of petition; hearing; appraisers; aggrieved party may take exceptions. The said district, for effectuating the purposes of its incorporation, is authorized to purchase or to take and hold for public uses by the exercise of the right of eminent domain, which right is hereby delegated to said district, the entire plant, property, franchises, rights, immunities and privileges now owned by the Guilford Water Company and the Sangerville Water Supply Company, including all buildings, pipes, standpipes, reservoirs, machinery, fixtures, hydrants, tools, apparatus and appliances owned by said Guilford Water Company and said Sangerville Water Supply Company, and any land or interest therein, or water rights necessary for erecting and maintaining dams for flowage, for storage or for pumping its water supply, for reservoirs or standpipes, for preserving the purity of the water supply and water shed, for laying and maintaining aqueducts and other structures, for rights of way or roadways to its sources of supply, its dams, power stations, reservoirs, mains, aqueducts and other structures, used or usable in the carrying out of its purposes. In the event that said district exercises the right of eminent domain for the taking of the lands and property of the Guilford Water Company and the Sangerville Water Supply Company, or either of them, said district, through its trustees, is hereby authorized to take said plants, property and franchises of said Guilford Water Company and said Sangerville Water Supply Company, or either of them, as for public use, by petition therefor in the manner hereinafter provided. The said trustees, acting for and in the name of said district, may file a petition in the clerk's office of the supreme judicial court for the county of Piscataquis, in term time or in vacation, addressed to any justice of said court, who after due notice to said Guilford Water Company and said Sangerville Water Supply Company, or either of them, and other mortgagees, if any, shall, after hearing and within sixty days after the filing of said petition, or such further time as the justice hearing such case may grant upon motion of either party, appoint three disinterested appraisers, none of whom shall be residents of towns constituting said district, for the purpose of fixing a valuation of said plant, property and franchises. Said petition, after being filed, shall not be withdrawn or dismissed

except with the consent of said companies or either of them, in respect of the proceedings against it. At the hearing aforesaid, said justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of the supreme judicial court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice, upon motion of the petitioner, may fix a time at which the said water companies, or either of them, shall file in the clerk's office of the supreme judicial court for the county of Piscataquis, for the inspection of the petitioner, the following: First: Schedules showing the names, residences and water service of all customers on the first day of such month as said presiding justice may specify with the rate charged therefor; Second: Copies of all contracts in force on said first day of such month as said presiding justice may specify; Third: An itemized statement of the gross income earned during its last complete fiscal year and up to the first day of such month as said presiding justice may specify, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; Fourth: A memorandum of all real estate water rights, or interests therein, owned or controlled on said first day of such month as said presiding justice may specify with such brief description thereof as will reasonably identify the same; Fifth: Brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate-boxes, shut-off boxes, fixtures and machinery and all the physical elements in such water system, giving in detail quantities, sizes, lengths, and specifying the streets, roads or ways where situated; Sixth: An itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of such month as said presiding justice may specify. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hear-

ing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the mains and pipes of the said water company, externally or internally, in the presence of the officers or agents of said water company, the entire expense thereof to be borne by said water district. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said water company shall receive its just compensation for all the same. The first day of such month as the presiding justice may specify, shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or a majority of them, shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same, or recommit it if justice so requires. Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before the appraisers proceed to fix the valuation of the property, plant and franchise of said company. Upon the confirmation of said report the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All the

findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within ten days after such final decree is signed, entered and filed, and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time, unless further time is granted by the court, or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided, such justice shall, upon motion of either party, after notice and hearing, take account of all receipts and expenditures properly had or incurred by the Guilford Water Company and the Sangerville Water Supply Company, or either of them, belonging to this period, from and after said first day of such month as the presiding justice may specify, and all net rents and profits accruing thereafter, and shall order the net balance to be added to, or deducted from, the amount to be paid under such final decree, as the case may be. All findings of law and fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises shall become vested in said water district. All of said plant, property and franchises shall be taken and shall vest in said district, subject to all bonds, mortgages, liens and incumbrances thereon, all which bonds, mortgages, liens and incumbrances shall be assumed and paid by said district. The compensation to be paid to said Guilford Water Company and said Sangerville Water Supply Company, or either of them, for said plant, property and franchises shall be the difference between the valuation thereof as fixed and determined by said appraisers and the aggregate amount of such bonds, mortgages, liens and incumbrances which are assumed by said district; provided, that if any part of said property is subject to any bond, mortgage or

other incumbrance attaching also to other property, the court may order the property so taken to be vested in the water district free of such lien and make provision for the application of the purchase money for the security of the owners of such bonds or other claims, in lieu of the lien on the property.

The appraisers may allow an additional amount to include any sum which shall represent the unamortized discount value of the outstanding bonds if the same shall be found by the court to be a proper element in determining the value of the property and if they shall be so directed by the court. In the event that said district shall exercise the right of eminent domain for the taking of land and property of persons, firms or corporations other than the Guilford Water Company and the Sangerville Water Supply Company, or either of them, said district shall file in the registry of deeds in the county of Piscataquis plans of the location of all land and water rights so taken under the provisions of this section, and no entry shall be made upon any lands, except to make surveys, until the expiration of ten days from said filing. Said district is hereby given the right of eminent domain, in the exercise of which, except as to the lands and property of the Guilford Water Company and of the Sangerville Water Supply Company hereinbefore specifically provided for, the said district shall file in the office of the county commissioners of Piscataquis county and record in the registry of deeds in said county, plans of location of all lands or interests therein or water rights to be taken, with appropriate descriptions and names of owners thereof. 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 lands or interests therein or water rights so taken, but title thereto shall not vest in said district until payment therefor. 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 Piscataquis county, may have such damages assessed by them; the procedure and all subsequent proceedings and right of appeal thereon shall be had under the same restrictions, conditions and limitations as are by law prescribed from time to time, in the case of damages by the laying out of highways.'

Sect. 3. Section sixteen of said act is further amended by striking out in the seventh line thereof the words "thirty-one", and inserting in place thereof the words 'thirty-three', so that said section, as amended, shall read as follows :

'Sect. 16. Acquisition of properties necessary to make act valid. If said water district shall fail to acquire the plant, properties, franchises, rights and privileges owned by said Guilford Water Company and Sangerville Water Supply Company, aforesaid, by purchase, or to file its petition to take the same by the exercise of the right of eminent domain as hereinbefore provided, in either case before the first day of July, nineteen hundred and thirty-three, this act shall become null and void. Said district shall not begin to furnish water under this act until it shall have acquired the properties of said Guilford Water Company and Sangerville Water Supply Company, as hereinbefore provided.'