

MAINE STATE LEGISLATURE

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NEW DRAFT UNDER NEW TITLE

EIGHTY-FIFTH LEGISLATURE

Legislative Document

No. 937

H. P. 1373 House of Representatives, March 20, 1931.

Reported by Mr. Hathaway from Committee on Public Health and laid on Table to be printed under Joint Rules.

CLYDE R. CHAPMAN, Clerk.

New Draft of H. P. 653, L. D. 218.

STATE OF MAINE

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

AN ACT to Authorize The Portland Water District to Acquire
all the Properties of the Casco Bay Light & Water Company
Used or Useful for the Supply of Water.

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

Section 1. The Portland Water District is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said District for said purpose, all the property, rights and franchises of the Casco Bay Light & Water Company, used or useful as a water company, except its cash assets and accounts receivable. Said Casco Bay Light & Water Company is hereby authorized to sell, transfer and convey its franchises and property, so far as they relate to the supplying of water, to said Water District. All said franchises and property shall be taken free from all bonds, mortgages, liens and incumbrances thereon, all of which said bonds, mortgages, liens and incumbrances shall attach to the purchase money in lieu of said franchises and properties, and shall be paid out of said purchase money or otherwise taken care of, as may be provided in the final decree for the application of the purchase money and transfer of said property and franchises.

Sec. 2. In case the Trustees of said District fail to agree with said Casco Bay Light & Water Company upon the terms of purchase of the above mentioned property on or before the first day of January 1932, said District through its Board of Trustees is hereby authorized to take all of said plant, property and franchises, used or useful, for the supply of water (except its cash assets and accounts receivable) free of all mortgages, liens and incumbrances thereon as stated in section one, as and for public uses, by a petition therefor in the manner hereinafter provided wherein said Casco Bay Light & Water Company and its mortgagees shall be parties defendant and said District through its Trustees is hereby authorized at any time after said first day of January A. D. 1932 and before the first day of January 1933, to file a petition in the Clerk's Office of the Supreme Judicial Court for the County of Cumberland, addressed to any Justice of said Court, who after due notice to said Casco Bay Light & Water Company, and its mortgagees, shall after hearing, and within sixty days after the filing of said petition, appoint three disinterested appraisers, none of whom shall be residents in the territory supplied by the Portland Water District in said state, one of whom shall be learned in the law, for the purpose of fixing the valuation of the plant, property and franchises of said Water Company so taken.

Said petition partaking as it does of the principles of equity may be entered on the equity side of the docket, and said petition shall not be dismissed after filing except by consent of both parties but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. At the hearing aforesaid, or at any time during the proceeding, such Justice, upon motion of the petitioner, may order, if the same are not voluntarily produced, under proper terms, the production in court for the inspection of the petitioner of all the books and papers pertinent to the issues to be heard by said appraisers, the terms and conditions of so producing or filing said 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, 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 said water company shall file in the Clerk's office of the Supreme Judicial Court for the County of Cumberland for the inspection of the petitioner, so far as they relate to water service, the following: First: Schedule showing names, residences and water service of all its customers on the first day of January in the year nineteen hundred and thirty-two, with the rates charged therefor; Second: copies of all contracts in force for the supply of water on said first day of January, nineteen hundred and thirty-two; Third: an itemized statement of the gross water income earned during the last three complete calendar years up to said first day of January, nineteen hundred and thirty-two, and all water operating expenses and fixed charges paid or accrued during said period, and properly chargeable thereto; Fourth: a memoranda of all real estate devoted to the water service and water rights or interests therein owned or controlled on said first day of January, nineteen hundred and thirty-two, with such brief description thereof as will reasonably identify the same; Fifth: brief description, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate shut-offs, fixtures and machinery, and all rights of way for maintenance of pipe lines, and all other physical elements in such water system, giving in detail quantities, size, lengths, dates of installation when known, and specifying the streets, rights of way and where situated; Sixth: an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on said first day of January, 1932.

Any expenses incurred by the Casco Bay Light & Water Company in preparing copies of any papers or other data filed by it in compliance with such order of court shall be borne by the water district. Such orders may be enforced from time to time by any Justice of said Supreme Judicial Court, upon motion of either party, as such Justice may deem reasonable and proper in the premises. The sitting Justice 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 by examination or tests the true condition of the mains and pipes of said water company, externally or internally, in the presence of the officers or agents

of said water company, the entire expense of such examination or tests to be borne by said water district. The said appraisers shall have the power to compel the attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary to a full understanding by them of the matter in question, and may administer oaths; and any witness or person in charge of said books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalty and proceedings so far as applicable as witnesses summoned to attend the Supreme Judicial Court. Depositions may be taken as in civil actions.

The report of the stenographers appointed by the appraisers, certified by said appraisers as correct, shall be filed with the award to be made by said appraisers and shall be legal evidence of all proceedings so reported.

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 Casco Bay Light & Water Company shall receive just compensation for all the same. The first day of January, nineteen hundred and thirty-two, shall be the date as of which the valuations aforesaid shall be fixed and from which date interest on said award shall run, at the rate of six per cent per annum, and all net 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 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.

Upon the confirmation of said report, the award of the appraisers shall be conclusive as to valuations, and the Court so sitting shall thereupon after hearing make final decree on the entire matter including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred with the power to enforce said decree as in equity cases. Said final decree shall provide for the payment of the purchase money in such manner that the trustee or trustees of underlying mortgages on said premises or a part

thereof shall be adequately protected and the Court may make such other order relating to the application of the purchase money, as it may deem necessary for the protection of the bondholders, creditors and stockholders of said Company.

All the costs and expenses arising under such petition and appraisal shall be paid and borne as directed by the Court in said final decree. The findings of such Justice as to such costs and expenses and their apportionment shall be final. In all other matters, the Justice so making such final decree shall upon request of any of the parties make separate findings of law and fact. All such findings of fact shall be final but any party aggrieved may take exceptions to any rulings of law so made, and the subsequent procedure thereon shall be as provided in section twelve of chapter four hundred thirty-three of the Private and Special Laws of Maine of 1907, entitled, "An Act to Incorporate the Portland Water District." Before the aforesaid properties and franchises are transferred in accordance with such final decree and before the payment therefor, the Court sitting in said County of Cumberland, by a single Justice thereof, shall take account of all receipts and expenditures properly had and incurred by said Casco Bay Light & Water Company in so far as they relate to the supplying of water in its said territory from and after January 1st, 1932, and shall order the net balance due to either party to be added to or deducted from the amount to be paid under said final decree, as the case may be. All findings of law or fact by such single Justice at such hearing shall be final. On payment or tender by said Water District of the amount so fixed and the performance of all other terms and conditions so imposed by the Court, the entire plant, property and franchises of said Casco Bay Light & Water Company so far as they relate to the supplying of water as described in section one hereof, shall become vested in said Water District free from all liens, mortgages and incumbrances thereon. Either party may file and prosecute motions and petitions relating to the premises at any stage of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting Justice, or in case of his inability to act, any Justice of said Court appointed by the Chief

Justice, may after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers anew or for any extension of time for making their award or otherwise as the circumstances of the case may require. Nothing herein contained shall preclude said District from acquiring said properties from said Casco Bay Light & Water Company at any time by mutual agreement.

Sec. 3. All valid contracts now existing between the said Casco Bay Light & Water Company and any person, corporation or municipal corporation for supplying water on the islands in Casco Bay, shall be assumed and carried out by said Portland Water District, provided that copies of such contracts shall have been filed by said Company as hereinbefore provided.