

# MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

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Legislative Document

No. 396

H. P. 1066

House of Representatives, February 5, 1935.

Referred to Committee on Legal Affairs and 1,000 copies ordered printed.  
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Stoddard of Eastport.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-FIVE

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AN ACT To Incorporate the Eastport Water District

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

**Sec. 1. Creation of water district.** The following territory and the people within the same, namely the city of Eastport, shall constitute a public municipal corporation under the name of the Eastport Water District for the purpose of supplying the inhabitants of said municipality with pure water for industrial, sanitary and municipal purposes.

**Sec. 2. Powers of district to take water.** The said district for the purpose of its incorporation is hereby authorized to take, hold, divert, use and distribute water from Little river situated in the town of Perry, and Boyden's lake in said town of Perry.

**Sec. 3. Power to take land.** 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.

**Sec. 4. Power to lay pipes, etc.** 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.

**Sec. 5. Power to erect dams, etc.** 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.

**Sec. 6. Eminent domain; procedure in; recording.** In exercising any right of eminent domain conferred 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 authorized 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 10 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.

**Sec. 7. Where damage disputed; procedure; appeal.** 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 Washington county, may have said 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 or may be by law prescribed in the case of damages by the laying out of highways.

**Sec. 8. Conflict with railroad; procedure.** In case of any crossing of a railroad, unless consent is given by the company owning and operating such railroad as to place, manner and condition of the crossing, within thirty days after such consent is requested by said district, the public utilities commission shall determine the place, manner and condition of such crossing; and all work within the limits of such railroad location shall be done under the supervision and to the satisfaction of such railroad company, but at the expense of the district.

**Sec. 9. Officers of district; election of; duties; salary.** All the affairs of said district shall be managed by a board of trustees composed of 3 members, who shall be elected by a majority vote of the legal voters within said water district at an election to be specially called and held therefor within 30 days after the approval of this act by the legal voters of said Eastport water district. Such special election shall be called, advertised and conducted according to the law relating to municipal elections in said city of Eastport. The result of such election shall be declared by the municipal officers and due certificate thereof filed with the city clerk thereof. The term of office of the trustees shall be until the 3rd Monday in June in each alternate year after the approval of this act, as hereinafter provided. As soon as convenient after members of said board have been chosen, said trustees shall hold a meeting at the city rooms in said city of Eastport, and organize by the election of a president and clerk, adopt a corporate seal and when necessary may choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. They may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of said district. At said 1st meeting the trustees so elected shall determine by lot the term of office of each trustee so that 1 trustee shall retire each 2 years and whenever the term of office of a trustee expires his successor shall be elected by a majority vote by the legal voters of said water district, and for this purpose an election of said water district shall be called and held on the 3rd Monday of June of each alternate year the same to be called in the manner hereinbefore provided for the 1st election of trustees. The trustees so elected shall serve the full term of 6 years; and in case a vacancy arises in the membership of the board of trustees it shall be filled in like manner for the unexpired term, by a special

election to be called by the municipal officers of the city of Eastport. All such trustees shall be eligible to election as trustee. Said trustees may procure an office and incur such expenses as may be necessary. Each member shall receive in full compensation of this service an allowance of \$100 per annum or such other sum as may be approved by the municipal officers of the city of Eastport. At the close of each fiscal year the trustees shall make a detailed report of their doings, of the receipts and expenditures of said water district, of its financial and physical condition and of such other matters and things pertaining to said district as shall show the inhabitants of said district how said trustees are fulfilling the duties and obligations of their trust, such reports to be made and filed with the principal officers of said city of Eastport on or before the 1st day of February of each year. The report of said trustees shall be printed by the municipal officers of the city of Eastport in a separate report.

**Sec. 10. May purchase certain water companies.** Said water district is hereby authorized and empowered to acquire by purchase or by exercise of the right of eminent domain, which right is hereby expressly delegated to said water district for said purposes, the entire plant, property, franchise rights, and privileges now held by the Eastport water company and the Perry equipment company, for the purpose of supplying water for domestic or municipal purposes or both, including all lands, waters, water rights, dams, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by said companies, and used or usable in supplying water in said district or in the city of Eastport and the town of Perry, together with all real estate so used or usable. The cash assets of each of said companies are hereby expressly and specifically exempted from the operation of this section. The said companies are hereby authorized to sell and transfer their franchises and property to said water district.

**Sec. 11. Procedure where companies refuse to convey.** In case the said trustees fail to agree with the aforesaid companies upon terms of purchase on or before September 16th, 1935, then said water district, through its trustees, is hereby authorized to take the plant, property and franchises of the aforesaid companies as authorized in section 10 as for public uses, by petition therefor in the manner provided wherein such companies and their mortgagees shall be the parties defendant. And said water district, through its trustees, is hereby authorized on or before October 1st, 1935, to file a petition in the clerk's office of the supreme judicial court, for the county of Washington, in term time or in vacation, addressed to any justice

thereof, who, after notice to said defendant companies and their mortgagees, shall after hearing and within 30 days after the filing of said petition appoint three disinterested appraisers, none of whom shall be residents of the county of Washington, one at least of whom shall be learned in the law, for the purpose of fixing the valuation of the plant, property and franchises of said defendant companies as described in section 10. Said petition shall not be dismissed after filing but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by said justice in his order therefor and to be enforced from time to time as any justice of said supreme judicial court for the county of Washington, for the inspection of the petitioner, the following: 1st; schedules showing the name, residence, street number, if any, and water service of each customer on September 16th, 1935, with rate charged therefor; 2nd, copies of all contracts in force on said September 16th; 3rd, an itemized statement of the gross income earned during its complete fiscal year and all operating expenses and fixed charges paid or incurred during each year and properly chargeable thereto; 4th, a memorandum of all real estate, or interest therein, owned or controlled on said September 16th, with such brief description thereof as will reasonably identify the same; 5th, a memorandum of all water rights used or owned on said September 16th with a brief description thereof and a concise statement of the method of acquiring the same; 6th, duplicate plans of all structures owned in whole or in part on said September 16th, with specifications thereof; 7th, description and specifications of all reservoirs and stand pipes owned on said September 16th; 8th, a description of all pipes, service pipes, hydrants, gates, gate boxes, valves, shut-off boxes, meters, fixtures and machinery, and all the physical elements in such water system, giving in detail all quantities, sizes, lengths, specifying the streets, roads or ways where situated; 9th, an itemized list of all tools, apparatus and appliances used or usable in supplying water on said September 16th. 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 hearing 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 condition of the mains and pipes of the defendant companies, internally and externally, all work

connected therewith to be in the presence of the agents of the aforesaid companies, but wholly at the expense of said water district, said decree to fix the number of such examinations and to impose such conditions as may to the court seem just and proper in the premises. The said appraisers shall have the power of compelling attendance of witnesses and the production of books and papers pertinent to the issue and may administer oaths; and any witness or person in charge of such books or 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 said appraisers may appoint a sufficient number of stenographers to enable a full report of the proceedings of each day to be in readiness for use the following day, each of said appraisers to so have 1 copy thereof, and the parties to receive such number of copies as the appraisers may deem necessary. The compensation and expenses of said stenographers shall be taxed and allowed by the appraisers and be paid and borne as hereinafter provided. Their reports, 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. They shall make full report as required in trials had in the supreme judicial court. The appraisers so appointed shall, after due notice and hearing, fix the valuation of the plant, property and franchises of said defendant companies at what they are fairly and equitably worth, so that said defendant companies shall receive just compensation for all the same. The 1st day of November, 1935 shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award at the rate of 5% per annum shall run and all net rents and profits accruing thereafter shall belong to said water district. The report of said appraisers, or of a majority of them shall be filed in said clerk's office within 3 months after their appointment, but if at the expiration of said 3 months the hearing before said appraisers should then be in progress and unfinished, their report may be so filed within 30 days after close of said hearing. After said report is filed, such single justice, so appointing said appraisers or in case of his inability to act, then any justice designated for the purpose by the chief justice, may, after notice and hearing, confirm or reject the same or recommit if justice so requires, and in case of such rejection or recommitment such justice may fix the times for new hearings and new report thereon. The award of the appraisers shall be conclusive as to valuations. Upon confirmation of their report, the court so sitting, in term time or in vacation, shall thereupon, after hearing, make final decree upon the whole matter, including the transfer of the properties and

franchises, jurisdiction over which is hereby conferred with the same power to enforce said decree as in equity cases. 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, the same to be accompanied by only such parts of the case as are necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed, and notice thereof has been given by the clerk 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 of such exceptions and there heard unless otherwise agreed, or the law shall for good cause order a further time for hearing thereon. Upon such hearing the law court may confirm, reverse or modify the decree of the court below or remand the cause for further proceedings, as it seems proper. During the pendency of such exceptions the cause shall remain on the docket of the court below, marked "law" and decree shall be entered thereon by a single justice, in term time or in vacation, in accordance with the certificate and opinion of the law court. Before the aforesaid plant, property and franchises are transferred in accordance with such final decree, and before the payment therefor, the court sitting in said county of Washington, by a single justice thereof, as hereinbefore provided, shall, upon motion of any party, after notice and hearing, take account of all receipts and expenditures properly had and incurred by said companies belonging to the period from and after November 1st, 1935, and all net rents and profits accruing thereafter, and shall order the net balance due to any party 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 or fact by such single justice at such hearings shall be final. The amount to be paid for the plant of each of the aforesaid companies shall be paid to the trustee of the mortgage of each respective company and by such trustee distributed pro rata upon the outstanding bonds secured by such mortgage, and any balance of said amount shall be paid by said trustee to its respective company. On payment of 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 plants, properties and franchises



of said defendant companies as described in section 10 shall become vested in said water district and be free from all liens, mortgages and incumbrances, theretofore created. After the filing of said petition it shall not be discontinued or withdrawn by said water district, and the companies may thereafter cause said valuation to be made as herein provided, and shall be entitled to appropriate process to compel said water district to perform the terms of the final decree and to pay for said plants, properties and franchises in accordance therewith. If a vacancy occurs at any time in said board of appraisers, from any cause, any justice of the supreme judicial court, sitting in said county of Washington, may, in terra time or in vacation, 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.

**Sec. 12. Existing contracts to be honored.** All valid contracts made in good faith, now existing between said defendant companies and any person or corporation for supplying water within the city of Eastport named in section one shall be assumed and carried out by said Eastport water district.

**Sec. 13. Authority to borrow money; issue bonds.** For accomplishing the purposes of this act, said water district, through its trustees, is authorized to borrow money temporarily and to issue therefor the interest-bearing negotiable notes of the district and for the purpose of paying or refunding the indebtedness so created, of paying any necessary expenses and liabilities, incurred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the property and franchises of the Eastport water company and the Perry equipment company, by purchase or otherwise, or in the purchase or acquisition of the property and franchises of said defendant companies, of securing sources of supply, taking water and lands, paying damages, laying pipes, constructing, maintaining and operating a water plant, and making renewals, extensions, additions and improvements to the same, the said water district, through its trustees, may from time to time issue bonds of the district to an amount or amounts necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of the water district, which is hereby declared to be a quasi municipal corporation within the meaning of section 116 of chapter 56 of the revised statutes, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

**Sec. 14. Exemption from taxation.** The property of said district shall be exempt from all taxation in the town or towns where said water district is located.

**Sec. 15. Rate provisions.** All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the territory supplied by the district. Said rates shall be so established as to provide revenue for the following purposes:

1. to pay the current expenses for operating and maintaining the water system.

2. to provide for the payment of the interest on the indebtedness created by the district.

3. to provide each year a sum equal to not less than  $\frac{1}{2}$  of 1% nor more than 5% of the entire indebtedness created by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold.

**Sec. 16. Incidental powers granted.** All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

**Sec. 17. Act to take effect, conditionally.** This act so far as it includes the territory and people constituting the Eastport water district, as provided in section 1 thereof, shall not take effect as to said Eastport, unless accepted and approved by a majority vote of the legal voters of said city voting at an election to be specially called and held for the purpose on August 5th, 1935. Such special election shall be called, advertised and conducted according to the law relating to municipal elections. The city clerk shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the Eastport water district be accepted?" and the voters shall indicate by the words "yes" or "no" their opinion of the same. The result in said city of Eastport shall be declared by the municipal officers and due certificate thereof filed by the city clerk with the secretary of state.

**Sec. 18. Election of approval to be held; how.** This act subject to the provision of section 17 shall take effect when approved by a majority vote

of the legal voters of said Eastport Water District voting at an election to be specially called and held for the purpose on August 5th, 1935, such special election shall be called, advertised and conducted according to the law relating to municipal elections. The city clerk shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the Eastport water district be accepted?" and the voters shall indicate by the words "yes" or "no" their opinion of the same. The result shall be declared by the municipal officers and due certificate filed by the city clerk with the secretary of state. In case this act is not approved by a majority vote of the legal voters of said Eastport water district at its first meeting on August 5th, 1935, it may be approved at any subsequent meeting held on the 1st Monday in August, 1936, by a majority of voters in said water district, said subsequent meeting to be called, advertised and conducted in the same manner as the meeting on August 5th, 1935.

**Sec. 19. Invalidating circumstance.** If said water district shall fail to acquire by purchase or by the exercise of the right of eminent domain as in this act provided, the plant, properties, franchise, rights and privileges owned by the Eastport water company and the Perry equipment company and used or usable in supplying water in the city of Eastport, then this act shall become null and void.

**Sec. 20. Time act to take effect.** This act shall take effect in 90 days after the final adjournment of the legislature, so far as necessary to empower the calling and holding of the elections authorized in section 17 herein provided for.

**Sec. 21 Not a repealing act.** Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole, or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 62 of the revised statutes, and all acts amendatory thereof or additional thereto.