

MAINE STATE LEGISLATURE

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N I N E T Y - F O U R T H L E G I S L A T U R E

Legislative Document

No. 1502

S. P. 668

In Senate, April 15, 1949.

Received by unanimous consent. Read once and tomorrow assigned without reference to a committee and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Noyes of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-NINE

AN ACT Relating to the Brewer Water District.

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

Sec. 1. P. & S. L., 1945, c. 146, amended. Chapter 146 of the private and special laws of 1945, as amended, is hereby further amended by adding thereto a new section to be numbered 2-A, to read as follows:

‘Sec. 2-A. Further powers. The said water district is further empowered, subject to the approval and regulation of the public utilities commission, through contract or otherwise, except on the west side of the Penobscot river, to sell and supply water for domestic, municipal and other purposes to individuals and other entities outside the territorial limits of the city of Brewer residing at or near any of the mains or conduits of said water district as the same may be lawfully established, installed and maintained pursuant to the provisions of this act.’

Sec. 2. P. & S. L., 1945, c. 146, § 10, repealed and replaced. Section 10 of chapter 146 of the private and special laws of 1945, as amended, is hereby repealed and the following enacted in place thereof:

‘Sec. 10. Procedure in case trustees and water company fail to agree on terms of purchase. In case said trustees fail to agree with said Penobscot County Water Company upon the terms of purchase of the above men-

tioned property on or before October 1, 1949, which they are hereby authorized and empowered to do, said district, through its trustees aforesaid, is hereby authorized to take said plant, property and franchises, as for public use by petition therefor filed on or before October 1, 1949 in the manner hereinafter provided which shall be the date as of which the property is taken and the valuation thereof fixed, and if at any stage of the proceedings the parties agree upon the amount and terms of the purchase, acquisition may be had and the court shall decree accordingly. Said water district, through its trustees, is hereby authorized on or before October 1, 1949 to file a petition in the clerk's office of the supreme judicial court for the county of Penobscot, in term time or in vacation, addressed to any justice of said court, who, after due notice to said Penobscot County Water Company and its mortgagees, shall, after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law and none of whom shall be residents of Penobscot county, for the purpose of fixing a valuation of said plant, property and franchises.

At or before 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 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 supreme judicial court, in court time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At or before said hearing, such justice upon motion of the petitioner, may fix a time at which the said water company shall file in the clerk's office of the supreme judicial court for the county of Penobscot for the inspection of the petitioner, so far as they relate to the service in the city of Brewer, the following: 1st, schedule showing the names, residences and water service of all its customers on the date of filing said petition, with the rate charged therefor; 2nd, copies of all contracts in force on the date of filing said petition; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to the date of filing said petition, and all operating expenses and fixed charges, paid or incurred during such period and property chargeable thereto; 4th, a memorandum of all real estate, water rights, or interest therein, owned or controlled on the date of filing said petition, with such brief description thereof as will reasonably identify the same; 5th, 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 street, roads, or ways where situated; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water on the date of filing said petition. 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 or before 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 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 just compensation for all and the same. In fixing such valuation, the appraisers shall make full allowance to the Penobscot County Water Company for all damages occasioned to it by the severance of the plant, property and franchises so taken from the plant, property and franchises which are now owned, enjoyed and exercised by the Penobscot County Water Company under its present charter. The said date of filing shall be the date as of which the valuation aforesaid shall be fixed as hereinbefore provided, 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

appraisers proceed to fix the valuation of the property, plant and franchises 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 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 question 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 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, including but not limited to all expenditures for betterments, extensions and capital additions properly had and incurred by the Penobscot County Water Company from and after the date of the filing of said petition, and all net rents and profits accruing from and after the date of filing of said petition, 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 fact by said justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the portion of plant, property and franchises of Penobscot County Water Company within the city of Brewer used and usable in supplying water in the city of Brewer shall become vested in said water district. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.'

Sec. 3. P. & S. L., 1945, c. 146, § 17, amended. Section 17 of chapter 146 of the private and special laws of 1945, as amended, is hereby further amended to read as follows:

'Sec. 17. Act void unless property of water company is acquired. If said water district shall fail to purchase or file its petition to take by

eminent domain, ~~on or before July 1, 1947~~ **October 1, 1949**, as in this act provided, the plant, properties, franchises, rights and privileges owned by the Penobscot County Water Company and used or usable in supplying water in the city of Brewer, then this act shall become null and void, **except that the corporate entity shall continue until all obligations and liabilities incurred under the provisions of section 12 have been settled in full or otherwise enforced pursuant to the provisions of said section 12, and the provisions of said section 12 for the enforcement of obligations and liabilities shall continue applicable.**

Sec. 4. P. & S. L., 1945, c. 146, amended. Chapter 146 of the private and special laws of 1945, as amended, is hereby further amended by adding thereto a new section to be numbered 21, to read as follows:

'Sec. 21. Separability. The sections and provisions of this act as amended are separable, and the objects of the corporation hereby created cannot otherwise be attained. It is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions, or parts thereof, are for any reason illegal, the remaining sections or provisions, or parts thereof, shall remain in full force and effect.'

Sec. 5. Re-enactment clause. Except for section 16 of said original enactment, the purposes of which have been accomplished, and except for section 20 of said original enactment, the purpose of which is not applicable to this enactment, said charter with all rights and powers thereunder as heretofore and hereby amended is re-enacted.