

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
One Hundred and Sixth Legislature
1ST SPECIAL SESSION
JANUARY 2, 1974 TO MARCH 29, 1974
AND BY THE
One Hundred and Seventh Legislature
REGULAR SESSION
JANUARY 1, 1975 TO JULY 2, 1975

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH THE REVISED STATUTES OF 1964, TITLE 3,
SECTION 164, SUBSECTION 6.

THE KNOWLTON AND MCLEARY COMPANY
FARMINGTON, MAINE
1975

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
One Hundred and Seventh Legislature

1975

If a complainant shall allege that unless a temporary restraining order shall be issued before such hearing can be held that said substantial and irreparable injury to complainant's property will not likely be avoided, a temporary restraining order may be granted upon the expiration of such reasonable notice as the court may direct by order to show cause but in no case less than 48 hours.

Said order to show cause shall specify facts sufficient to justify the court to issue a preliminary injunction. Said order shall be based upon testimony under oath or, in the discretion of the court, upon affidavits sworn to before a justice of the peace or notary public. Such order shall be served upon the party or parties to be restrained.

Such temporary restraining order shall be effective for no longer than 5 days except as thereafter provided. If the hearing for a preliminary injunction shall have been begun before the expiration of the said 5 days, and if the complainant has shown by clear and convincing evidence that an imminent danger of substantial and irreparable injury to his or its property or to his person will exist if the restraining order is not continued, the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the preliminary injunction.

A temporary restraining order without notice may be issued only on the condition that the complainant has shown by clear and convincing evidence that an imminent danger of substantial and irreparable injury to his or its property or to his person exists in the absence of a restraining order. Said order without notice may furthermore be issued only on the condition that the complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense or damage caused by the issuance of such order, including all reasonable costs and expense for defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

Nothing in this section shall deprive any party of any remedy that may be had at law.

Effective October 1, 1975

CHAPTER 461

AN ACT Repealing Invalid Rate Provisions and Other Provisions of Questionable Validity Pertaining to Public Utilities Commission Jurisdiction over Sanitary, Sewerage, Sewer, Utility and Water Districts.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Public Utilities Commission on December 26, 1974 has ruled that it cannot constitutionally regulate the rates of some districts operating sewer systems if it cannot regulate them all; and

Whereas, a few districts operating sewer systems do have a provision in their charters requiring such regulation but many do not; and

Whereas, the districts with such a provision are unable to implement their rates where the commission cannot constitutionally approve them; and

Whereas, there are other provisions in the charters of said districts which require Public Utilities Commission regulation which are of questionable validity; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA § 1065, as enacted by PL 1965, c. 310, is repealed.

Sec. 2. 38 MRSA § 1201, first, 2nd and 3rd sentences, as last amended by PL 1967, c. 524, § 8, are further amended to read:

Any sanitary district formed under this chapter, for the purposes of accomplishing its objectives, of paying and refunding its indebtedness, of paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities whether incurred by the district or any municipality therein, or any person residing in unorganized territory encompassed by said district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by said district for any such expenses incurred or paid by it or him, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction, by resolutions of its board of trustees, without district vote ~~but subject to approval of the Public Utilities Commission under Title 35, chapter 1 to 17~~ is authorized to borrow money and issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine ~~subject to such approval of said Public Utilities Commission~~. Any such bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees ~~subject to such approval of the Public Utilities Commission~~ may determine. Bonds, notes or evidence of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees ~~subject to such approval of the Public Utilities Commission~~ may determine.

Sec. 3. 38 MRSA § 1202, first and 2nd ¶¶, as enacted by PL 1965, c. 310, are amended to read:

All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of any district formed under this chapter the rates, tolls, rents, entrance charges and other lawful charges established by the trustees ~~and approved by the Public Utilities Commission~~ for the sewer or drainage service used or available with respect to their real estate, which rates shall include rates for such district's readiness to serve charged against

owners of real estate, abutting on or accessible to, sewers or drains of the district, but not actually connected thereto, whether or not such real estate is improved.

Rates, tolls, rents and entrance charges shall be uniform within such district, whenever the cost to the district of installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform; but nothing shall preclude the district ~~subject to approval of the Public Utilities Commission~~ from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents and entrance charges in sections where, for any reason, the cost to the district of construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the sections where they apply.

Sec. 3-A. 38 MRSA § 1202, as last amended by PL 1967, c. 524, § 9, is further amended by adding after the 2nd paragraph a new paragraph to read:

Notwithstanding any other provision of law, districts which share, supply or contract for services with another district shall establish rates, tolls, rents and entrance charges mutually agreeable to the trustees of each participating district.

Sec. 4. P & SL 1923, c. 98, § 1, last ¶, as enacted by P & SL 1955, c. 182, § 1, is amended to read:

Said body shall be constituted also for the purpose of providing adequate sewerage facilities for the collection, discharge and disposition of sewage as may be necessary for the convenience and health of the inhabitants of said district; ~~provided, however, that the district shall not construct any system of sewerage without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under power vested in said Commission by section 13 of Chapter 11 of the Revised Statutes of 1954 and any acts additional thereto or amendatory thereof.~~

Sec. 5. P & SL 1923, c. 98, § 15, 4th sentence, as repealed and replaced by P & SL 1955, c. 182, § 15, is amended to read:

Rates shall be uniform within the district, and the rates, rules and regulations of the district with respect to its water system shall be subject to the approval of the Public Utilities Commission.

Sec. 6. P & SL 1925, c. 80, § 1, last ¶ is repealed.

Sec. 7. P & SL 1941, c. 62, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that except for the construction of sewage facilities, it shall not construct any system of pipelines or development, without the approval of the Public Utilities Commission pursuant to the Revised Statutes of 1964, Title 35.

Sec. 8. P & SL 1945, c. 72, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that with the exception of construction related to sewage and drainage facilities, it shall not construct any system of pipelines or

development, without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under power vested in said commission by the Revised Statutes of 1964, Title 35.

Sec. 9. P & SL 1945, c. 83, § 5 is repealed and the following enacted in place thereof:

Sec. 5. Procedure in exercising right of eminent domain. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

Sec. 10. P & SL 1947, c. 44, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that with the exception of construction related to sewage and drainage facilities, it shall not construct any system of pipelines or development, without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under the power vested in said commission by the Revised Statutes of 1964, Title 35.

Sec. 11. P & SL 1947, c. 44, § 4 is repealed and the following enacted in place thereof:

Sec. 4. Procedure. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed in the Revised Statutes of 1964, Title 38, section 1153.

Sec. 12. P & SL 1947, c. 148, § 5 is repealed and the following enacted in place thereof:

Sec. 5. Procedure in exercising the right of eminent domain. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed in the Revised Statutes of 1964, Title 38, sections 1153 and 1154.

Sec. 13. P & SL 1949, c. 211, § 5-B, first sentence is repealed and the following enacted in place thereof:

The district shall have the right to determine whether extensions to its system shall be made, subject to the authority of local and state health officials and the sanitary water board.

Sec. 14. P & SL 1949, c. 211, § 10, first sentence is repealed and the following enacted in place thereof:

All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said commissioners to pay for the cost of the works and for the service used by them and said rates shall not be discriminatory within the territory supplied by the district.

Sec. 15. P & SL 1955, c. 139, § 7, first sentence is repealed and the following enacted in place thereof:

The district shall have the right to determine whether extensions to its system shall be made subject to the authority of local and state health officials and the Department of Environmental Protection.

Sec. 16. P & SL 1955, c. 139, § 19, first sentence is amended to read:

All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said commissioners to pay for the cost of the works and for the service used by them; and said rate shall not be discriminatory within the territory supplied by the district ~~and shall be subject to the approval of the Public Utilities Commission.~~

Sec. 17. P & SL 1955, c. 195, § 4 is repealed and the following enacted in place thereof:

Sec. 4. Procedure in exercising right of eminent domain. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, sections 1153 and 1154.

Sec. 18. P & SL 1955, c. 195, § 6, the first and last sentences are amended to read:

For accomplishing the purposes of this Act, the district is hereby authorized and empowered, through its trustees, to issue notes, bonds and other evidences of indebtedness ~~to an amount approved by the Public Utilities Commission~~ to procure funds to pay the expenses incurred in acquiring and constructing its plant or plants, properties and franchises for further extension, additions or improvements of the same, whether done at one time or from time to time, and to refund same as they fall due.

The trustees may also borrow on the notes of the district ~~such sums as may be approved by the Public Utilities Commission~~ to meet the current expenses of the district in anticipation of the collection of rates.

Sec. 19. P & SL 1955, c. 195, § 7, 3rd sentence is repealed and the following enacted in place thereof:

Rates shall be uniform within the district.

Sec. 20. P & SL 1957, c. 59, § 15, first sentence, is amended to read:

All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the district and subject to the approval of the Public Utilities Commission to the extent provided for by the Revised Statutes of 1964, Title 35.

Sec. 21. P & SL 1957, c. 143, § 5 is repealed and the following enacted in place thereof:

Sec. 5. Procedure in exercising right of eminent domain. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

Sec. 22. P & SL 1957, c. 143, § 15, first sentence is amended to read:

All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the district and, **except as to sewer rates**, subject to the approval of the Public Utilities Commission.

Sec. 23. P & SL 1961, c. 154, § 16, last sentence is repealed and the following enacted in place thereof:

Notes and bonds of said district shall be approved by the Public Utilities Commission only as required by the Revised Statutes of 1964, Title 35.

Sec. 24. P & SL 1961, c. 154, § 20, 3rd ¶ is repealed and the following enacted in place thereof:

The water rates, tolls, rents and entrance charges shall be subject to the approval of the Public Utilities Commission and both said water and sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

Sec. 25. P & SL 1963, c. 226, § 18, 2nd ¶, first sentence is amended to read:

Rates, tolls, rents and interest charges shall be uniform whenever the cost to the district of installation and maintenance of sewers and drains and their respective appurtenances and the costs of services is substantially uniform; but nothing in this Act shall preclude the district from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rent and entrance charges in sections where, for any reason, the cost to the district for construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the section where they apply; ~~and all such rates, rules and regulations of the district shall be subject to the approval of the Public Utilities Commission.~~

Sec. 26. P & SL 1963, c. 232, § 4, first ¶ is repealed and the following enacted in place thereof:

The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

Sec. 27. P & SL 1963, c. 232, § 8, first sentence is amended to read:

For accomplishing the purposes of this Act, said district, through its trustees, is authorized, with the approval of the Public Utilities Commission and a vote of the district, to borrow money from time to time, to an amount not exceeding \$300,000 and to issue therefor the interest-bearing negotiable notes of the district, maturing serially or otherwise and to make subsequent renewals of

the same in whole or in part, and for said purposes and for the purpose of refunding any notes, bonds or other lawful indebtedness to establish a fund therefor.

Sec. 28. P & SL 1965, c. 239, § 14, last sentence is repealed and the following enacted in place thereof:

Notes and bonds of said district shall be approved by the Public Utilities Commission only to the extent required by the Revised Statutes of 1964, Title 35.

Sec. 29. P & SL 1967, c. 212, § 14, last sentence is amended to read:

All notes and bonds with the maturity of more than one year shall be first approved by the Public Utilities Commission if such approval is required by the Revised Statutes of 1964, Title 35.

Sec. 30. P & SL 1969, c. 107, § 21 is repealed.

Sec. 31. P & SL 1971, c. 79, § 19, last 2 sentences are repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 12, 1975

CHAPTER 462

AN ACT Amending the Employment Security Law.

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

Sec. 1. 26 MRSA § 1043, sub-§ 11, ¶ F, sub-¶ (2) last sentence, is amended to read:

If this State shall not be certified for any year by the Secretary of Labor under section 3304 of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in section ~~1223~~ 1225, subsection 5, with respect to contributions erroneously collected;

Sec. 2. 26 MRSA § 1051, sub-§ 4 is amended to read:

4. Nondisclosure or misrepresentation to receive benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact, and such nondisclosure or misrepresentation was known to him or ought to have been known by him to be fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the commission either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the commission for the Unemployment Compensation Fund, a sum equal to the