

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

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

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

PRIVATE AND SPECIAL LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE FIRST SPECIAL SESSION

January 19, 1976 to April 29, 1976

AND THE SECOND SPECIAL SESSION

June 14, 1976

The results of such elections shall be declared by the municipal officers of said town and due certificates thereof filed by the town clerk with the Secretary of State.

Effective March 5, 1976

CHAPTER 125

AN ACT to Clarify Certain Provisions of the Newport Water District Charter.

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

Whereas, the Town of Newport will be able to vote on the exercising of these new powers in June of 1976; and

Whereas, without emergency enactment this Act will not become effective prior to this time; and

Whereas, the exercising of these powers will thus be seriously delayed if no emergency enactment is made; 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:

P & SL 1975, c. 29, §§ 10 and 11 are repealed and the following enacted in place thereof:

Sec. 10. Authority to purchase; right of eminent domain to take certain property of Maine Water Company. The Newport Water District is authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain which right is expressly delegated to the district for that purpose, the entire plant, property, franchises, rights and privileges of the Maine Water Company located in or serving the Town of Newport, except its cash assets and accounts receivable, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by the company in or serving the Town of Newport, whether the record title thereto is or is not in the Maine Water Company. The company is authorized to sell, transfer and convey the franchise and property relating to the Town of Newport to the water district.

Sec. 11. Procedures for purchase or exercise of right of eminent domain. Before exercising any right of eminent domain conferred under this Act with respect to the property of the Maine Water Company, the district shall make a reasonable effort to acquire said property by purchase. The district shall cause said property to be appraised for the purpose of determining the amount that would constitute just compensation for the taking of said property. The district, its agents, employees or designees may, upon 30-days' written notice to the Maine Water Company, enter upon the real property of the Maine Water Company, make surveys, examinations, photographs, tests and samplings of the real or personal property of the Maine Water Company for the purpose of appraising said real or personal property. Such entry as aforesaid shall take place during daylight hours. The entry and activities authorized by this section shall not constitute a trespass, but the district shall be liable for physical injury to and for substantial interference with possession or use of property of the Maine Water Company caused by its entry and activities upon the property, which damages may be recovered by complaint in a civil action. The district shall establish the amount which it believes to be just compensation for said property and shall submit to the Maine Water Company a proposed offer to purchase said property for the amount so established. The amount of said offer shall not be less than the district's approved appraisal of the fair market value of said property. Compliance by the district with the foregoing shall be determined to be, and shall constitute, a reasonable effort by the district to acquire said property by purchase.

If, within 60 days of the date the proposed offer to purchase is submitted to the Maine Water Company, the district and the Maine Water Company are unable to reach agreement as to the amount of just compensation, the district through its trustees, is authorized and empowered to take and acquire as for public use the entire plant, property, franchises, rights and privileges of the Maine Water Company, wherever located, which serves the Town of Newport, except its cash assets and accounts receivable, but including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by the company, whether the record title thereto is or is not in the Maine Water Company, and to record in the Penobscot County Registry of Deeds a Notice of Condemnation and Taking which shall be in substantially the following form:

NOTICE OF CONDEMNATION AND TAKING

The Newport Water District does hereby give notice to all whom it may concern:

That the Newport Water District, in accordance with the authority delegated to it by the provisions of the private and special laws of 1975, chapter 29, as amended, has determined to and does hereby exercise its right of eminent domain to acquire as for public use the entire plant, property, franchises, rights and privileges of the Maine Water Company located in or serving the Town of Newport, except its cash assets and accounts receivable, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by the company located in or serving in the Town of Newport, whether the record title thereto is or is not in the Maine Water Company.

This Notice of Condemnation and Taking shall be recorded in the Registry of Deeds of Penobscot County, a copy shall be served upon the Maine Water Company in the manner provided by law and a copy shall be sent by certified mail to any mortgagees and holders of any tax liens or other encumbrances of record.

Dated:

NEWPORT WATER DISTRICT

BY

Its Chairman
Duly Authorized

STATE OF MAINE

COUNTY OF PENOBSHOT, SS:

Date:

Personally appeared the above named _____, of the Newport Water District and acknowledged the above instrument to be his free act and deed in his capacity and the free act and deed of the Newport Water District.

Before me,

.....
Justice of the Peace
Notary Public

Upon the recording of the Notice of Condemnation and Taking as aforesaid, a check in the amount determined by the district to be just compensation and a copy of the Notice of Condemnation and Taking shall be served upon the Maine Water Company. Service of the Notice of Condemnation and Taking, together with the check, shall be made by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. Acceptance and cashing of the check shall not constitute a waiver of the right of the Maine Water Company to appeal the district's determination of just compensation. In the event there is a mortgage, tax lien or other encumbrance of record covering any of said property, a copy of the Notice of Condemnation and Taking shall be sent by the district by registered or certified mail to the holder of record of said mortgage, tax lien or other encumbrance addressed to the office or place of abode of the holder, if known; otherwise to the office, place of abode of the holder as set forth in said record.

The date of the recording of the Notice of Condemnation and Taking shall be the date of taking and the recording of the Notice of Condemnation and Taking shall vest title to the property therein described in the district.

Within 30 days of the date of the recording of the Notice of Condemnation and Taking, the Maine Water Company shall file in the clerk's office of the Superior Court of the County of Penobscot and serve a copy upon the district, so far as they relate to the water service provided in the Town of Newport, the following: First, a schedule showing the names, residences and water service

of all of its customers with the rate charged therefor; second, copies of all contracts in force; third, an itemized statement of the gross income earned during its last complete fiscal year and up to the first day of the month preceding the recording of the Notice of Condemnation and Taking 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 by the company, with a 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 the water system, giving in detail quantities, sizes and lengths and specifying the streets, roads or ways where situated; and sixth, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water.

If the company fails or refuses to file the required information, as aforesaid, within the 30-day period, a Justice of the Superior Court, on complaint by the district, shall order the company to file the information and shall make such decree as he deems reasonable and appropriate to enforce the order.

In the event that the Maine Water Company deems itself aggrieved by the district's determination of just compensation and tender thereof, as aforesaid, it may appeal to the Superior Court for Penobscot County within 30 days after the date of the receipt of the Notice of Condemnation and Taking and the tendered compensation. Such appeal shall be taken by filing a complaint setting forth substantially the facts upon which the appeal is based. The Maine Water Company shall serve notice of such appeal upon the district by sending, by registered or certified mail within the time above limited, a true copy of said complaint to the district.

The court shall appoint 3 referees who shall determine the amount of just compensation. One of the referees so appointed shall be learned in the law. The referees shall prepare a report which includes findings of fact and conclusions of law. The Order of Reference shall reserve to the parties the right to object to the acceptance of the referees' report on both findings of facts and conclusions of law, except that the court shall adopt the referees' findings of fact, unless clearly erroneous. The court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

If the Maine Water Company has cashed the check tendered to it by the district and the final judgment is less than the amount of the tendered check, then the court shall order the Maine Water Company to pay to the district the excess of the compensation tendered by the district, including interest on the excess at the legal rate from the date of tender, and to pay costs from the time of appeal. Execution shall issue on such judgment.

If the final judgment, exclusive of interest, is not less than the compensation tendered by the district, exclusive of any interest allowed, then the court shall order the district to pay to the Maine Water Company the amount by which the final judgment is in excess of the compensation tendered by the district, and for interest on such excess from the date of taking at the legal rate. No interest shall be allowed to the Maine Water Company on any amount paid or tendered to it by the district. Execution shall issue on such judgment.

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

Effective March 5, 1976

CHAPTER 126

AN ACT Concerning the Charter of the Orono-Veazie Water District.

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

Whereas, the Maine Supreme Judicial Court has recently held one portion of the charter of the Orono-Veazie Water District unconstitutional; and

Whereas, the Orono-Veazie Water District supplies vitally needed water to many inhabitants of the Orono-Veazie area; and

Whereas, the district's charter must be cured of its unconstitutionality as soon as possible to avoid any possible interference with its authority to supply water to its customers; 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:

P. & S. L. 1971, c. 67, is repealed and the following enacted in place thereof:

Sec. 1. Territorial limits; corporate name; purposes. Subject to section 16, the inhabitants and territory within the Towns of Orono and Veazie in the County of Penobscot shall be and hereby are constituted a public municipal corporation under the name of "Orono-Veazie Water District" for the purpose of supplying the inhabitants of said district with pure water for domestic, sanitary, manufacturing and municipal purposes.

Sec. 2. Source of supply. The said water district, for the purposes of its incorporation, is authorized to take, collect, store, hold, divert, use, flow, detain and distribute water from any lake, pond, stream or river and from any surface or underground brook, spring or vein of water in said Towns of Orono and Veazie, and from any other source from which the Penobscot County Water Company is now authorized to take water, including sources outside of the Towns of Orono and Veazie.

Sec. 3. Right of eminent domain conferred. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for