

HOUSE No. 6547

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 28, 1982.

The committee on Bills in the Third Reading, to whom was referred the Bill relative to the establishment of municipal light plants (House, No. 1625), reports recommending that the same be amended by the substitution of the accompanying bill (House, No. 6547).

For the committee,

LEON J. LOMBARDI.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT RELATIVE TO THE ESTABLISHMENT OF MUNICIPAL LIGHT PLANTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 164 of the General Laws is hereby amended by striking
2 out section 43, as appearing in the Tercentenary Edition and
3 inserting in place thereof the following section: —

4 *Section 43.* If a town which votes to establish a municipal light-
5 ing plant fails, within one hundred and fifty days from the passage
6 of the final vote required by section thirty-five or thirty-six, to
7 agree, as to price or as to the real or personal property to be
8 included in the purchase, with any person, utility corporation or
9 municipality engaged at the time of the first vote required by said
10 section thirty-five or thirty-six in generating or distributing gas or
11 electricity for sale for lighting or other purposes in such town,
12 either such town or such corporation or such person or municipali-
13 ty may apply to the department of public utilities within thirty days
14 after the expiration of said one hundred and fifty days for a
15 determination either as to what specific property should be in-
16 cluded in the purchase and what constitutes a fair price to be paid
17 for said property, having in view the original cost of the property
18 less a reasonable allowance for depreciation and obsolescence, and
19 any other element which may enter into a determination of the fair
20 value of the property so purchased, but such value shall be estimat-
21 ed without enhancement on account of future earning capacity or
22 good will, or of exclusive privileges derived from rights in the
23 public ways; and thereupon the department, after notice to the
24 parties, shall give a hearing thereon and accord other such proce-
25 dures as may be required in chapter thirty A. After said hearing, the
26 department shall make the determination of the fair value of such
27 property. Such property shall include such portion of the property
28 of such person, corporation or municipality within the limits of

29 such town as is suitable for, and used in connection with, the
30 generation or distribution of gas or electricity within such limits;
31 provided, that such person shall include both a gas and electric
32 lighting plant only if a single corporation owns or operates both
33 such plants; such price shall include damages, if any, which the
34 department finds would be caused by the severance of the property
35 proposed to be included in the purchase from other property of the
36 owner. If any such property is subject to any mortgages, liens or
37 other encumbrances, the department in making its determination
38 shall provide for the deduction or withholding from the purchase
39 price, pending discharge, of such sum or sums as it deems proper.
40 Such determination of fair value shall be subject to judicial review
41 in the manner provided by section five of chapter twenty-five.

42 Within thirty days after such determination has been made by
43 the department, the owner of the property being acquired under
44 the provisions of chapter seventy-nine, shall notify the town of its
45 acceptance of such determination as made by the department, and
46 within a further period of thirty days shall tender a good and
47 sufficient deed of conveyance to the city or town clerk of the
48 property required by the department to be purchased, and shall
49 then place said deed in escrow, and said town shall have sixty days
50 in which to accept or reject said tender, and if it accepts such tender
51 it shall have a further period of ninety days in which to pay to the
52 owner the price determined as hereinbefore provided. Such accept-
53 ance or rejection in the case of a city shall be by vote of its city
54 council, or its commissioners if its government consists of a com-
55 mission, and in case of a town shall be by vote at a town meeting. A
56 town's rejection of such tender and its subsequent failure to seek
57 timely judicial review of the department's determination fair value,
58 shall be considered a rescission of all votes theretofore passed for
59 the establishment of a municipal lighting plant.

60 If the owner of the property being taken under the provisions of
61 said chapter seventy-nine does not accept the department's deter-
62 mination of fair value, said owner may seek judicial review as
63 provided in said section five of said chapter twenty-five. Said
64 petition for review shall stop the town or city seeking to establish a
65 municipal lighting plant from taking control of said property in the
66 manner provided in this section until either a final court judgement

67 has been rendered or the owner discontinues or does not seek
68 further review of said determination of fair value. At such time that
69 final judicial review has concluded or the matter is no longer
70 sought to be reviewed, the owner shall within thirty days tender a
71 good and sufficient deed of conveyance to the city or town clerk of
72 the property required to be purchased, and shall then place said
73 deed in escrow. Said town shall within a sixty days accept or reject
74 said tender, and if it accepts such tender shall within further period
75 of ninety days pay to the owner the price so determined. Upon such
76 payment, title to the property shall vest with the city or town. Such
77 acceptance or rejection in the case of a city shall be by vote of its
78 city council, or its commissioners if its government consists of a
79 commission, and in case of a town shall be by vote at a town
80 meeting. A town's rejection of such tender, after judicial review has
81 been exhausted, shall be considered a rescission of all votes there-
82 tofore passed for the establishment of a municipal lighting plant.

83 The department shall employ such procedures as it may deem
84 necessary to insure that a city or town which has voted to establish
85 a municipal lighting plant according to the provisions of this
86 chapter, shall be able to take by eminent domain such property or
87 right of the owner. The department, in carrying out any proceed-
88 ings under the provisions of chapter seventy-nine, shall assure an
89 expeditious and just determination of the matters as to price and
90 property that are in controversy.

91 After the department's determination and judicial review, if
92 sought, the owner is liable to convey said property to the city or town
93 establishing a municipal lighting plant within the time periods
94 specified in this section, if the city or town accepts such determina-
95 tion. Failure to timely convey such property shall be a civil penalty
96 and said owner shall be subject to equitable and punitive remedies
97 including fines of no more than five thousand dollars per day of
98 lateness or failure to comply.