

By Mr. Ambler of Weymouth, petition of Robert B. Ambler, Robert F. Donovan and Theodore J. Aleixo, Jr., relative to the establishment of municipal lighting plants. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT RELATIVE TO THE ESTABLISHMENT OF MUNICIPAL LIGHTING 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
2 striking out section 43, as most recently amended by chapter
3 379 of the acts of 1929, and inserting in place thereof the
4 following section: —

5 *Section 43. Duties of Department in Case of Disagreement*
6 *as to Such Purchase: Proceedings if Owner Fails to Convey*
7 *after Determination by Department.*

8 If a town which votes to establish a municipal lighting plant
9 fails, within one hundred and fifty days from the passage of
10 the final vote required by section thirty-five or thirty-six, to
11 agree, as to price or as to the property to be included in the
12 purchase, with any person or municipality engaged at the time
13 of the first vote required by said section thirty-five or thirty-
14 six in generating or distributing gas or electricity for sale for
15 lighting purposes in such town, either such town or such
16 person or municipality may apply to the department within
17 thirty days after the expiration of said one hundred and fifty
18 days for a determination as to what property ought in the
19 public interest to be included in the purchase and what price
20 should be paid, having in view the cost of the property less a
21 reasonable allowance for depreciation and obsolescence, and
22 any other element which may enter into a determination of a
23 fair value of the property so purchased, but such value shall be

24 estimated without enhancement on account of future earning
25 capacity or good will, or of exclusive privileges derived from
26 rights in the public ways; and thereupon the department, after
27 notice to the parties, shall give a hearing thereon and make the
28 determination aforesaid. Such property shall include such por-
29 tion of the property of such person or municipality within the
30 limits of such town as is suitable for, and used in connection
31 with, the generation or distribution of gas or electricity within
32 such limits; provided, that such purchase shall include both a
33 gas and electric lighting plant only if a single corporation owns
34 or operates such plants. Such price shall include damages, if
35 any, which the department finds would be caused by the
36 severance of the property proposed to be included in the
37 purchase from other property of the owner. If any such
38 property is subject to any mortgages, liens or other encum-
39 brances, the department in making its determination shall
40 provide for the deduction or withholding from the purchase
41 price, pending discharge, of such sum or sums as it deems
42 proper. Such determination of evaluation shall be subject to
43 judicial review.

44 Within thirty days after such determination shall have been
45 made by the department, the owner shall notify the town of
46 its acceptance of the determination as made by the depart-
47 ment, and within a further period of thirty days shall render a
48 good and sufficient deed of conveyance to the city or town
49 clerk of the property required by the department to be
50 purchased and shall then place said deed in escrow, and said
51 town shall have sixty days in which to accept or reject said
52 tender, and if it accepts shall have a further period of sixty
53 days in which to pay to the owner the price determined as
54 hereinbefore provided. Such acceptance or rejection in a case
55 of a city shall be by vote of its city council, or its commission-
56 ers if its government consists of a commission, and in case of
57 town shall be by vote at a town meeting. A rejection of the
58 tender shall operate as a rescission of all votes theretofore
59 passed for the establishment of a municipal lighting plant.