

# HOUSE . . . . . No. 406.

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[Bill accompanying the petition of Frederic O. MacCartney. Manu-  
factures]

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## Commonwealth of Massachusetts.

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In the Year One Thousand Nine Hundred.

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### AN ACT

Relative to the Purchase and Construction of Gas  
and Electric Plants by Cities and Towns.

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

1 SECTION 1. On a vote of the people to that  
2 effect, any city or town may purchase or con-  
3 struct, extend, enlarge or supplement, own, con-  
4 trol and operate, gas or electric works to supply  
5 the municipality and its inhabitants with light,  
6 heat or power; and two or more municipalities  
7 may unite in the purchase, construction and  
8 operation of such works.

1 SECTION 2. Where gas or electric works es-  
2 tablished for the purpose in hand, and reasonably  
3 fit therefor, already exist and their owners are

4 willing to sell as hereinafter provided, the pur-  
5 chase of such works (or if two or more distinct  
6 plants of different ownership exist in the same  
7 municipality, the purchase of at least one of such  
8 plants) shall be a condition of the rights of  
9 municipal construction, operation, etc., set forth  
10 in section one.

11 (a) In case of a gas or electric plant lying  
12 within the limits of a city or town, it may buy the  
13 same at its actual value.

14 (b) In case of a plant lying partly in one mu-  
15 nicipality and partly in another:—

16 First, all municipalities concerned may co-  
17 operate and buy the whole plant at its actual  
18 value; or

19 Second, the municipality in which the main gas  
20 works or central lighting station of the plant is  
21 situated, may purchase the whole plant at the said  
22 actual value and may operate the plant within and  
23 without the municipal limits; or

24 Third, any municipality may purchase the por-  
25 tion of such plant within its own limits at the  
26 actual value of such portion plus the damages  
27 due to the severance of such portion from the rest  
28 of the plant; and, as between two municipalities  
29 each desiring to own a given portion of such a  
30 plant, this third right shall be paramount to the  
31 second or to any ownership acquired under the  
32 second.

1 SECTION 3. The said actual value shall not  
2 include any allowance for franchise or for privi-

3 leges in the streets, nor take any account of good  
4 will or earnings, past, present or future, but shall  
5 be simply the actual value of the physical plant  
6 (or portion thereof), to be found by taking the  
7 cost of establishing a new plant (or portion) of  
8 equivalent capacity and equally good materials  
9 and workmanship, and subtracting the portion of  
10 this value representing the inferiority of the ex-  
11 isting plant as compared with a new one of  
12 equivalent capacity, by reason of age, wear and  
13 tear, progress of invention and discovery, or other  
14 source of depreciation.

15 The estimates of cost, depreciation, actual  
16 value, and damages for severance, if any, shall  
17 relate to the time of the vote for purchase, the  
18 prices of labor, materials, machinery, etc., and  
19 other conditions at that date being used in making  
20 the calculations.

1 SECTION 4. Upon a vote for purchase, the  
2 mayor or selectmen shall forthwith give notice of  
3 such vote to the person, firm or corporation own-  
4 ing the works to be bought, and such owners, if  
5 they desire to sell, shall, within fifteen days after  
6 said notice, appoint some person to act as arbi-  
7 trator; within the same time a second arbitrator  
8 shall be appointed by the mayor or selectmen;  
9 and these two shall choose a third who shall not  
10 be an officer of the municipality nor an officer or  
11 stockholder of the company or otherwise inter-  
12 ested in said works to be bought. Within sixty  
13 days the arbitrators shall report to the mayor or

14 selectmen and to the person, firm or company  
15 owning the works, their determination as to the  
16 reasonable fitness of the works, and the aforesaid  
17 cost, depreciation, actual value, and damages for  
18 severance, if any. If no two of the arbitrators  
19 agree, or if arbitration fails in any way after the  
20 appointment of an arbitrator by the owner or  
21 owners of the works, or if either party feels  
22 aggrieved by the results of the arbitration, or  
23 refuses to execute the sale or purchase in accord-  
24 ance with the award of two arbitrators, petition  
25 will lie, within fifteen days, to the supreme judi-  
26 cial court or any justice thereof, on which a trial  
27 shall be had in the manner of hearings in equity,  
28 and the decree of the court shall be final and  
29 binding, and the court shall have jurisdiction in  
30 equity to compel compliance therewith on behalf  
31 of either party.

32 On payment of the aforesaid actual value and  
33 damages for severance, if any, as determined by  
34 award or by decree if the matter is taken into  
35 court, the municipality shall have a right to the  
36 title and possession of said works (or portion)  
37 free of all incumbrance, or it may pay over the  
38 difference between the amount of said value and  
39 damages, and the amount of any lien, mortgage or  
40 other incumbrance on the property, and take the  
41 works subject to such incumbrance.

1 SECTION 5. Upon the purchase of such works  
2 (or portion) by a municipality all rights of the  
3 former owners or others to make or distribute gas

4 or electricity in that municipality shall cease, ex-  
5 cept so far as expressly agreed to the contrary  
6 between such persons and the municipality in pur-  
7 suance of an ordinance ratified at the polls or a  
8 vote in town meeting; and after said purchase no  
9 grant of a gas or electric franchise for the supply  
10 of light, heat or power shall be valid in such  
11 municipality until ratified by the people: *provided*,  
12 *however*, that if two or more distinct plants exist  
13 in the municipality and it does not buy them all,  
14 those remaining unbought shall retain all rights  
15 of manufacture, distribution, etc., as if the mu-  
16 nicipality had not entered the field.

1 SECTION 6. If the owners of said works refuse  
2 to sell or decline to arbitrate as above provided,  
3 the city or town may proceed to build works of  
4 its own.

1 SECTION 7. If no suitable works exist in the  
2 town or city it may construct them and extend,  
3 enlarge, own, control, maintain and operate them.

1 SECTION 8. In case of a city the mayor may,  
2 and on petition of five per centum of the voters of  
3 the city, or request of either council or board of  
4 aldermen, must cause the question of such pur-  
5 chase, construction, etc., to be submitted to the  
6 people at the next election, first notifying the citi-  
7 zens fully of the matters to be voted upon by  
8 thorough publication at least three weeks before  
9 the vote. In a town the question may be deter-

10 mined by putting the matter in the warrant in the  
11 regular way and deciding it by vote at town  
12 meeting. The mayor of a city and the selectmen  
13 of a town shall be general agents to enforce the  
14 rights of the municipality under this law.

1 SECTION 9. The construction, extension, main-  
2 tenance and management of such municipal works,  
3 employment of superintendent and all matters of  
4 direction and operation shall be in charge of a  
5 non-partisan board of three members (no two  
6 members from the same political party) appointed  
7 by the mayor or selectmen (one to hold one year,  
8 one to hold two years and one to hold three  
9 years) and thereafter annually one member to be  
10 appointed to hold for three years.

1 SECTION 10. Public works shall not be sold or  
2 leased except upon and in accordance with a vote  
3 at the polls or in town meeting.

1 SECTION 11. This act shall take effect upon its  
2 passage.