

SECOND CLASS CITIES, WATERWORKS
Act of Jul. 1, 1937, P.L. 2637, No. 509
AN ACT

Cl. 11

Authorizing and empowering cities of the second class to erect and construct waterworks, as herein defined, within and without their corporate limits, to acquire property, as herein defined, within and without their corporate limits by purchase, lease, gift, and the power of eminent domain, and to use, purchase, sell, dispose, and supply water within and without their corporate limits; prescribing the powers and duties of such cities; providing for the assessment of damages; and repealing inconsistent laws.

Section 1. Be it enacted, &c., That the word "property" as used in this act shall be construed to mean and include lands, buildings, earth, sand, clay, gravel, rock, stone, wood, materials, springs, streams, rivers, lakes, easements, and rights of way together with any facilities constructed thereon.

The term "waterworks" as used in this act shall be construed to mean reservoirs, dams, storing lakes, power plants, viaducts, aqueducts, canals, tanks, cisterns, water mains and pipes, pumping stations, filtration plants, buildings, machinery, and any other works connected with a public water supply system and necessary for the collection, reception, storage, purification, conveyance, and distribution of water for domestic and industrial consumption.

The word "city" means a city of the second class.

Section 2. Any city shall have power and authority to acquire by purchase, lease, gift or the exercise of the power of eminent domain any property, whether situate within or without the corporate limits of such city, and to erect or construct thereon waterworks for the purpose of using, purchasing, selling, disposing, and supplying water both within and without its corporate limits. Any such city shall have power to lay its water mains and pipes over or under any creek, stream, river, bridge, highway, railroad or railway.

Section 3. Whenever any city shall exercise the power of eminent domain for any of the purposes of this act, it shall not be necessary for such city to give or tender security for the taking, injury or destruction of property, but the funds raised or proper and lawful to be raised by the power of taxation in such city shall be pledged, and are hereby made security, to the owner or owners of property so taken, injured or destroyed, for all damages which they may sustain on account of such taking, injury or destruction, and such city shall not be required to give or tender any further security or to give or tender any bond or bonds whatsoever.

Section 4. Whenever any city has condemned property for waterworks purposes under the provisions of this act in any county of this Commonwealth other than the one in which such city is located, it shall record a copy of the ordinance making such condemnation in the office of the recorder of deeds of each

county where any of such property is located, together with any subsequent amendments or supplements to such ordinance.

Section 5. Upon the recording of the ordinance of condemnation in the county where any property is located, it shall be lawful for the city by its officers, agents or contractors to enter upon and take possession of any property so condemned and to erect and construct thereon waterworks and to do all things necessary for the purpose of fully carrying out the purposes of this act.

Section 6. If the owner, lessee or occupier shall refuse to remove his personal property or give up possession of any property taken by the city in the exercise of its power of eminent domain, the city may serve written notice upon such owner, lessee, or his agent, or the occupier, to remove his personal property and give up possession of such property within sixty days from the date of the service of such notice.

If the owner, lessee or occupier shall refuse to remove his personal property and give possession, upon proof of the service of the notice, a writ of habere facias possessionem shall forthwith issue, directing the sheriff to give to the city possession.

Section 7. If any city, in erecting and constructing waterworks, shall find it necessary, in storing water, to occupy and overflow with water any portion of any public road, the city shall cause such road to be reconstructed at its own expense on a favorable location and in as perfect a manner as the original road, and for such purposes is authorized to condemn lands. Whenever an agreement as to the price cannot be had with the owners, the damages for land so taken shall be assessed as herein provided in the case of property taken for waterworks purposes.

Section 8. The city shall attempt to agree with the owner of any property taken or to be taken, injured or destroyed as to the amount of damage done or likely to be done to him in the taking of such property and in the erection and construction of such waterworks, and, if no agreement can be reached, or if the owner cannot be found, or is not sui juris, the city or the owner or any person interested may apply by petition to the court of common pleas of the county where the property is located or to any law judge thereof in vacation, whereupon the court or judge shall appoint three viewers, from the county board of viewers, to view and ascertain the damages done by reason of said taking, use, occupancy, injury or destruction, and appoint a time not less than twenty nor more than thirty days thereafter when the viewers shall meet at or upon the premises affected. Thereupon the same proceedings shall be had for the assessment of damages and the costs and expenses in connection therewith, with the same right of appeal and trial by jury as is provided by the act, approved the sixteenth day of May, one thousand eight hundred and ninety-one (Pamphlet Laws, seventy-five), entitled "An act in relation to the laying out, opening, widening, straightening, extending or vacating streets and alleys, and the construction of bridges in the several municipalities of this Commonwealth, the grading, paving, macadamizing or otherwise improving streets and alleys,

providing for ascertaining the damages to private property resulting therefrom, the assessment of the damages, costs and expenses thereof upon the property benefited, and the construction of sewers and payment of the damages, costs and expenses thereof, including damages to private property resulting therefrom," and the amendments and supplements thereto.

Section 9. Any such city shall have power, with the consent of the owner thereof, to connect its waterworks with any other waterworks within and without its corporate limits and to use, purchase, sell, dispose, and supply of water.

Section 10. All acts and parts of acts, general, local or special, inconsistent with this act, are hereby repealed; but this act shall not be construed to repeal or modify the act, approved the eighth day of April, one thousand nine hundred thirty-seven, Act Number 64, entitled "An act providing for the appropriation of certain waters of the Commonwealth for the benefit of the people thereof; declaring void certain condemnations and appropriations of waters by municipalities, corporations, copartnerships or persons; providing for ascertainment of the validity and the filing of the records of certain condemnations and appropriations of water by municipalities, corporations, copartnerships or persons, and appeals therefrom; conferring jurisdiction on the court of common pleas of Dauphin County in relation thereto; providing for future condemnations and appropriations of waters by and allocation of waters to municipalities, corporations, copartnerships or persons, and for compensation for waters hereafter to be taken for public water supply purposes; and conferring powers and imposing duties upon the Water and Power Resources Board"; and it is the legislative intent that the power herein given, so far as it relates to condemnation of streams, rivers and lakes, shall be exercised in subordination thereto.

Section 11. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

Section 12. This act shall become effective immediately upon final enactment.