

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(EMERGENCY)
(New title)
New Draft of: H. P. 575, L. D. 651
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1591

H. P. 1451

House of Representatives, May 12, 1981

Reported by Representative Boisvert from the Committee on Public Utilities. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Clarifying the Authority of the Caribou Utilities District to Acquire the Caribou Water Works Corporation.

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

Whereas, an adequate supply of pure water is essential to the health and well-being of the inhabitants of the City of Caribou; and

Whereas, the present water system in Caribou is inadequate and in need of immediate improvement and repair to protect the quality of the water service and the health and well-being of the inhabitants of Caribou; and

Whereas, the purchase of the existing water system by the Caribou Utilities District will aid in obtaining grants and reduce the cost to the water users in compliance with the United States Safe Drinking Water Act, United States Code, Title 42, Section 300f et seq.; 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:

Sec. 1. P&SL 1945, c. 83, § 5, as repealed and replaced by PL 1975, c. 461, § 9, is repealed and the following enacted in its place:

Sec. 5. Procedure as to the exercise of right of eminent domain. In exercising any rights of eminent domain that are conferred in this section upon the district, the district shall file for record in the registry of deeds in the County of Aroostook at Houlton, plans of the location of lands or interest therein to be taken with an appropriate description, and the names of the owners thereof, if known. When for any reason the district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective or uncertain, it may at any time correct and perfect the location and file a new description thereof; and in that case the district is liable for damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any act which would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon possession may be had of all the lands or interest therein to be taken, but title thereto shall not vest in the district until payment therefor.

Sec. 2. P&SL 1945, c. 83, § 8, is amended to read:

Sec. 8. Board of trustees. All the affairs of ~~said~~ the district shall be managed by a board of trustees composed of ~~3~~ 5 members who ~~shall be~~ are bona fide residents of the ~~town~~ City of Caribou and who ~~shall be~~ are elected by the Caribou ~~town~~ city council or any body of officers acting in the capacity of the present ~~town~~ city council within 30 days after the acceptance of this ~~aet~~ Act by the inhabitants of ~~said~~ the district as hereinafter provided, but none of the members of the Caribou ~~town~~ city council, or any body of officers acting in the capacity of the present ~~town~~ city council, shall be eligible for such office of trustee, and whenever any of ~~said~~ the trustees becomes a member of ~~said~~ the Caribou ~~town~~ city council or any body of officers acting in the capacity of the present council, he shall automatically cease to be such trustee. As soon as convenient after the members of ~~said~~ the board have been appointed, ~~said~~ the trustees shall hold a meeting in the ~~town~~ City of Caribou, and organize by the election of president and clerk, adopt a corporate seal, and choose a treasurer and, when necessary, all other needful officers and agents, who, with the treasurer, shall serve at their pleasure and whose compensation shall be fixed by ~~said~~ the trustees. Whenever a vacancy occurs in the office of the president, clerk or treasurer it shall be promptly filled by ~~said~~ the board of trustees. At the ~~said~~ first meeting they may determine by agreement, or failing to agree they shall determine by lot the term of office of each trustee so that one or 2 shall retire each year and the term of office of the first trustee to expire shall end at the end of the municipal year of the ~~town~~ City of Caribou following the acceptance of this ~~aet~~ Act, and thereafter the term of office of a ~~trustee~~ one or 2 trustees shall expire with the end of each municipal year, and whenever the term of office of a trustee expires, the body which appointed ~~said~~ the trustee shall appoint a successor to serve the full term of 3 years, and in case

any other vacancy arises from any cause it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of ~~said~~ the town City of Caribou he vacates the office of trustee. They may also ordain and establish such ~~by laws~~ bylaws as are necessary for their own convenience and the proper management of the affairs of the district. ~~Said~~ The trustees may procure an office and incur such expenses as may be necessary. The treasurer shall furnish bond in such sum and with such sureties as they may approve. Members of the board shall be eligible to any office under the board, and shall be sworn into office by a justice of the peace, notary public, or the clerk of the town City of Caribou.

Sec. 3. P&SL 1945, c. 83, § 9, is repealed and the following enacted in its place:

Sec. 9. Authorized to acquire property and franchises of Caribou Water Works Corporation. The utilities district is authorized and empowered after approval by referendum of voters of the district to acquire by purchase or by the exercise of the right of eminent domain the entire plant, property, franchise, property rights, privileges and assets owned by Caribou Water Works Corporation in the district, including all land, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water facilities and drainage in the territory served by the company. If and when so acquired, the district, in addition to the powers conferred by this Act, shall have and enjoy and be entitled to exercise all of the rights, privileges and franchises of the Caribou Water Works Corporation, and may do and perform any and all of the acts and things authorized by the original charter of the Caribou Water Works Corporation, insofar as they are not inconsistent with the provisions of this Act. The district is not restricted from purchasing the accounts receivable of the Caribou Water Works Corporation. The company is authorized to sell, transfer and convey its franchises and property to the district.

Sec. 4. P&SL 1945, c. 83, § 11 is repealed and the following enacted in its place:

Sec. 11. Procedures for acquisition of property and franchise of Caribou Water Works Corporation. Before exercising any right of eminent domain conferred under this Act with respect to the property of the Caribou Water Works Corporation, the district shall make a reasonable effort to acquire the property by purchase. The district shall cause the property to be appraised for the purpose of determining the amount that could constitute just compensation for the taking of the property. The district, its agents, employees or designees, may, upon 30 days' written notice to the Caribou Water Works Corporation enter upon the real property of the Caribou Water Works Corporation, make surveys, examinations, photographs, tests and samplings of the real or personal property of the Caribou Water Works Corporation for the purpose of appraising the real or personal property. Such entry 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 possessing or use of, property of the Caribou Water Works Corporation 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 the property and shall submit to the Caribou Water Works Corporation a proposed offer to purchase the property for the amount so established. Compliance by the district with the foregoing shall be determined to be, and shall constitute, a reasonable effort by the district to acquire the property by purchase.

If, within 60 days of the date the proposed offer to purchase is submitted to the Caribou Water Works Corporation, the district and the Caribou Water Works Corporation are unable to reach agreement as to the amount of just compensation, the district through its trustees is authorized and empowered to take the plant, property and franchises as for public use and to record in the Aroostook County Registry of Deeds at Houlton a notice of condemnation and taking which shall be in substantially the following form:

“NOTICE OF CONDEMNATION AND TAKING

The Caribou Utilities District hereby gives notice to all whom it may concern:

That the Caribou Utilities District, in accordance with the authority delegated to it by the provisions of this Act, has determined to and does hereby exercise its right of eminent domain to acquire for public use the entire plant, property, franchises, rights and privileges of the Caribou Water Works Corporation located in or serving the district territory, except its cash assets and accounts receivable, including all lands, waters, water rights, reservoirs, pipes, machinery, vehicles, fixtures, hydrants tools and apparatus and appliances used or usable in supplying water to the district, whether the record title thereto is or is not in the Caribou Water Works Corporation.

This notice of condemnation and taking shall be recorded in the Registry of Deeds of Aroostook County, at Houlton, and a copy shall be sent to the Caribou Water Works Corporation by registered or certified mail or by personal service as required for service of a summons on a complaint in the Superior Court. A copy shall be sent to any mortgagees, holders of any tax liens or any other encumbrances of record by certified or registered mail.

Dated:

CARIBOU UTILITIES DISTRICT

By _____
Its
Duly Authorized

STATE OF MAINE
COUNTY OF AROOSTOOK, ss.

Date:

Personally appeared the above named

_____ of
the Caribou Utilities District, and acknowledged the above instrument to be his
free act and deed in his capacity and the free act and deed of the Caribou
Utilities District.

Before me,

Justice of the Peace
Notary Public "

Upon the recording of the notice of condemnation and taking as stated in this section, 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 Caribou Water Works Corporation. 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 a cashing of the check shall not constitute a waiver of the right of the Caribou Water Works Corporation 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 the 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 the mortgage, tax lien or other encumbrance addressed to the office or place of abode of the holder, if known; otherwise to the office or place of abode of the holder as set forth in the 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 60 days of the date of the recording of the notice of condemnation and taking, the Caribou Water Works Corporation shall file in the clerk's office of the Superior Court of the County of Aroostook at Houlton and serve a copy upon the district, so far as they relate to the water service provided in the district territory, the following: First, schedules showing the names, residence and water service of all of its customers with the rate charged therefor; 2nd, copies of all contracts in force; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up 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; 4th, a memorandum of all real estate, water rights, or interest therein, owned or controlled by the company, with such brief description thereof as will reasonably identify the same; 5th, 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 such water system, giving in detail quantities, sizes and lengths, and specifying the streets, roads or ways where situated; and 6th, 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 stated in this section within the 60-day period, a Justice of the Superior Court, on complaint by the district, shall order the company to file such information and shall make such decree as he deems reasonable and appropriate to enforce the order.

In the event that the Caribou Water Works Corporation deems itself aggrieved by the district's determination of just compensation and tender thereof, as stated in this section, it may appeal to the Superior Court for Aroostook County within 60 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 Caribou Water Works Corporation shall serve notice of such appeal upon the district by sending, by registered or certified mail within the time limit stated in this section, a true copy of the complaint to the district.

The court shall determine the amount of just compensation by a verdict of its jury, or, if the parties agree, by the court without a jury, or by a referee or referees, and shall render judgment for just compensation with interest at the legal rate where such is due, and for costs in favor of the party entitled thereto.

If the Caribou Water Works Corporation 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 Caribou Water Works Corporation 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 Caribou Water Works Corporation 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, and to pay costs from the time of appeal. No interest may be allowed to the Caribou Water Works Corporation on any amount paid or tendered to it by the district. Execution shall issue on such judgment.

If the district fails to file and record its notice of condemnation and taking before June 30, 1982, then the authority granted by this section shall cease.

Sec. 5. P&SL 1945, c. 83, § 12 is repealed and the following enacted in its place:

Sec. 12. Authorized to borrow money; to issue bonds and notes. For accomplishing the purposes of this Act, the district, by vote of its board of trustees, without district vote, except as provided in this section, is authorized to borrow money temporarily and to issue therefor its negotiable notes; and for the purpose of renewing and refunding the indebtedness so created, or paying any necessary expenses and liabilities incurred under the provisions of this Act, and in

acquiring properties, paying damages, laying pipes, mains, sewers, drains and conduits, purchasing, constructing, maintaining and operating a water system and a sewerage system and making renewals, additions, extensions and improvements to the system and to cover interest payments during any period of construction; the district, by vote of its board of trustees, without district vote, except as provided in this section, is authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine; provided that in the case of a vote by the trustees to authorize bonds or notes to pay for the acquisition of property, for the cost of a water system or sewerage system or part thereof, for renewal or additions or for other improvements in the nature of capital costs, the estimated cost of which, singly or in the aggregate included in any one financing is \$150,000 or more, subject to the annual consumer price index, as published by the appropriate governmental agency, must first be approved by local referendum of the voters of the district, but not for the acquisition of the property of the Caribou Water Works Corporation provided in this Act, and not for the already-planned-for local share of sewerage treatment plant, the aggregate of both of which shall not exceed \$6,000,000 or for renewing or refunding existing indebtedness or to pay for maintenance, repairs or current expenses. The bonds, notes and evidences of indebtedness may be issued to mature serially in annual installments of not less than 1% of the face amount of the issue and beginning not later than 2 years from the date thereof, or may be issued with equal annual payments, applied first to interest and the balance to principal, or made to run for such periods as the trustees may determine, but no issue may run for a longer period than 40 years from the date of original issue. Bonds, notes or evidences of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Caribou Utilities District," shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile of the signature of the treasurer. All bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, which is declared to be a quasi-municipal corporation within the meaning of the Revised Statutes, Title 30, section 5053, as amended, and all provisions of this section shall be applicable thereto. The district may, from time to time, issue its bonds, notes and other evidences of indebtedness for the purpose of paying, redeeming or refunding outstanding bonds, notes or evidences of indebtedness, and each authorized issue shall constitute a separate loan. All bonds, notes and evidences of indebtedness issued by the district shall be legal investments for savings banks in the State and shall be tax exempt. The district is authorized and empowered to enter into agreements with the State or Federal Government, or any agency of either, or any corporation, commission or board authorized by the State or Federal Government to grant or loan money to or otherwise assist in the financing of projects such as the district is authorized to carry out, and to accept grants and borrow money

from any government agency, corporation, commission or board as may be necessary or desirable to enforce this Act. All notes and bonds with the maturity of more than one year, in connection with the water system only, shall first be approved by the Public Utilities Commission.

Sec. 6. P&SL 1945, c. 83, § 15, as repealed and replaced by P&SL 1957, c. 7, § 1, is repealed and the following enacted in its place:

Sec. 15. Water and sewer rates; application of revenue. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of the district the separate water and sewer rates established by the board of trustees for the service or services used by them, and shall so pay the tolls, rents, entrance charges and other lawful charges established by the trustees for the sewer and drainage service used or available to their real estate. Such sewer rates may include rates for the district's readiness to serve, charged against owners of real estate on which is or are located a building or buildings whose drainage system should be connected to the district sewer system pursuant to section 12, although the buildings are not in fact connected. Rates, tolls, rents and entrance charges shall be uniform whenever the cost to the district of installation and maintenance of water mains and of sewers and their respective appurtenances and the cost of services is substantially uniform; but nothing in this Act shall preclude the district from establishing a higher rate, toll, rent or entrance charge than the regular rates, tolls, rents and entrance charges in sections where for any reason the cost to the district of construction and maintenance, or the cost of service, exceeds the average, but such higher rates, tolls, rents and entrance charges shall be uniform throughout the sections where they apply.

The water and sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:

- A. To pay the current expenses for operating and maintaining the water and sewerage systems;
- B. To provide for the payment of interest on the indebtedness created by the district;
- C. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by the district, which sum shall be used to pay serial bonds or notes when due or be turned into a sinking fund and there kept to provide for the extinguishment of the indebtedness. Money set aside for the sinking fund shall be devoted to the retirement of the obligations of the water and sewer district and invested in such securities as savings banks in this State are allowed to hold; and
- D. If any surplus remains at the end of the year, it may be turned into the sinking fund or used for such other purposes of the district as the trustees may determine.

The water rates, tolls, charges and rents shall be subject to the approval of the Public Utilities Commission.

Sec. 7. Transition provisions. The terms of office of the existing trustees shall not be changed, but 2 new trustees shall be added by election of the Caribou City Council, for terms of not less than one year and not more than 2 years and 3 years, respectively, to end at the end of the following municipal year and the municipal year after that.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved; except that section 2, amending section 8 of the charter, shall take effect upon acquisition by the Caribou Utilities District of the property and franchises of the Caribou Water Works Corporation.

STATEMENT OF FACT

The purpose of this new draft is to renew the authority of the Caribou Utilities District to acquire the property and franchises of the Caribou Water Works Corporation. The right to acquire Caribou Water Works Corporation's property and franchises, granted to the district in the original charter, lapsed on January 1, 1946.