

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 1808**

H. P. 1370

House of Representatives, April 3, 1975

On motion of Mr. Bustin of Augusta, referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Bustin of Augusta.

Cosponsor: Mr. MacEachern of Lincoln.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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**AN ACT Repealing Invalid Rate Provisions and Other Provisions of Questionable Validity Pertaining to Public Utilities Commission Jurisdiction over Sanitary, Sewerage, Sewer, Utility and Water Districts.**

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

Whereas, the Public Utilities Commission on December 26, 1974 has ruled that it cannot constitutionally regulate the rates of some districts operating sewer systems if it cannot regulate them all; and

Whereas, a few districts operating sewer systems do have a provision in their charters requiring such regulation but many do not; and

Whereas, the districts with such a provision are unable to implement their rates where the commission cannot constitutionally approve them; and

Whereas, there are other provisions in the charters of said districts which require Public Utilities Commission regulation which are of questionable validity; 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Sec. 1. 38 MRSA § 1065, as enacted by PL 1965, c. 310, is repealed.

**Sec. 2. 38 MRSA § 1201, first, 2nd and 3rd sentences**, as last amended by PL 1967, c. 524, § 8, are further amended to read:

Any sanitary district formed under this chapter, for the purposes of accomplishing its objectives, of paying and refunding its indebtedness, of paying any necessary expenses and liabilities incurred under this chapter, including organizational and other necessary expenses and liabilities whether incurred by the district or any municipality therein, or any person residing in unorganized territory encompassed by said district, the district being authorized to reimburse any municipality therein or any person residing in unorganized territory encompassed by said district for any such expenses incurred or paid by it or him, and in acquiring properties, paying damages, laying sewers, drains and conduits, constructing, maintaining and operating sewage and treatment plants, or systems, and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction, by resolutions of its board of trustees, without district vote ~~but subject to approval of the Public Utilities Commission under Title 35, chapter 4 to 17~~ is authorized to borrow money and issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts, bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine ~~subject to such approval of said Public Utilities Commission~~. Any such bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees ~~subject to such approval of the Public Utilities Commission~~ may determine. Bonds, notes or evidence 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 ~~subject to such approval of the Public Utilities Commission~~ may determine.

**Sec. 3. 38 MRSA § 1202, first and 2nd ¶¶**, as enacted by PL 1965, c. 310, are amended to read:

All persons, firms and corporations, whether public, private or municipal, shall pay to the treasurer of any district formed under this chapter the rates, tolls, rents, entrance charges and other lawful charges established by the trustees ~~and approved by the Public Utilities Commission~~ for the sewer or drainage service used or available with respect to their real estate, which rates shall include rates for such district's readiness to serve charged against owners of real estate, abutting on or accessible to, sewers or drains of the district, but not actually connected thereto, whether or not such real estate is improved.

Rates, tolls, rents and entrance charges shall be uniform within such district, whenever the cost to the district of installation and maintenance of sewers or their appurtenances and the cost of service is substantially uniform; but nothing shall preclude the district ~~subject to approval of the Public Utilities Commission~~ 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.

**Sec. 4.** P & SL 1923, c. 98, § 1, last ¶, as enacted by P & SL 1955, c. 182, § 1, is amended to read:

Said body shall be constituted also for the purpose of providing adequate sewerage facilities for the collection, discharge and disposition of sewage as may be necessary for the convenience and health of the inhabitants of said district; provided, however, that the district shall not construct any system of sewerage without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under power vested in said Commission by section 13 of Chapter 44 of the Revised Statutes of 1954 and any acts additional thereto or amendatory thereof.

**Sec. 5.** P & SL 1923, c. 98, § 15, 4th sentence, as repealed and replaced by P & SL 1955, c. 182, § 15, is amended to read:

Rates shall be uniform within the district, and the rates, rules and regulations of the district with respect to its water system shall be subject to the approval of the Public Utilities Commission.

**Sec. 6.** P & SL 1925, c. 80, § 1, last ¶ is repealed.

**Sec. 7.** P & SL 1941, c. 62, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that except for the construction of sewage facilities, it shall not construct any system of pipelines or development, without the approval of the Public Utilities Commission pursuant to the Revised Statutes of 1964, Title 35.

**Sec. 8.** P & SL 1945, c. 72, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that with the exception of construction related to sewage and drainage facilities, it shall not construct any system of pipelines or development, without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under power vested in said commission by the Revised Statutes of 1964, Title 35.

**Sec. 9.** P & SL 1945, c. 83, § 5 is repealed and the following enacted in place thereof:

**Sec. 5.** Procedure in exercising right of eminent domain. The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

**Sec. 10.** P & SL 1947, c. 44, § 1, last ¶ is repealed and the following enacted in place thereof:

Provided, however, that with the exception of construction related to sewage and drainage facilities, it shall not construct any system of pipelines or development, without first having submitted its plans to the Public Utilities Commission and obtained its advice therefor in writing, under the power vested in said commission by the Revised Statutes of 1964, Title 35.

**Sec. 11.** P & SL 1947, c. 44, § 4 is repealed and the following enacted in place thereof:

**Sec. 4. Procedure.** The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed in the Revised Statutes of 1964, Title 38, section 1153.

**Sec. 12.** P & SL 1947, c. 148, § 5 is repealed and the following enacted in place thereof:

**Sec. 5. Procedure in exercising the right of eminent domain.** The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed in the Revised Statutes of 1964, Title 38, sections 1153 and 1154.

**Sec. 13.** P & SL 1949, c. 211, § 5-B, first sentence is repealed and the following enacted in place thereof:

The district shall have the right to determine whether extensions to its system shall be made, subject to the authority of local and state health officials and the sanitary water board.

**Sec. 14.** P & SL 1949, c. 211, § 10, first sentence is repealed and the following enacted in place thereof:

All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said commissioners to pay for the cost of the works and for the service used by them and said rates shall not be discriminatory within the territory supplied by the district.

**Sec. 15.** P & SL 1955, c. 139, § 7, first sentence is repealed and the following enacted in place thereof:

The district shall have the right to determine whether extensions to its system shall be made subject to the authority of local and state health officials and the Department of Environmental Protection.

**Sec. 16.** P & SL 1955, c. 139, § 19, first sentence is amended to read:

All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said commissioners to pay for the cost of the works and for the service used by them; and said rate shall not be discriminatory within the territory supplied by the district and shall be subject to the approval of the Public Utilities Commission.

**Sec. 17.** P & SL 1955, c. 195, § 4 is repealed and the following enacted in place thereof:

**Sec. 4. Procedure in exercising right of eminent domain.** The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, sections 1153 and 1154.

**Sec. 18.** P & SL 1955, c. 195, § 6, the first and last sentences are amended to read:

For accomplishing the purposes of this Act, the district is hereby authorized and empowered, through its trustees, to issue notes, bonds and other evidences of indebtedness ~~to an amount approved by the Public Utilities Commission~~ to procure funds to pay the expenses incurred in acquiring and constructing its plant or plants, properties and franchises for further extension, additions or improvements of the same, whether done at one time or from time to time, and to refund same as they fall due.

The trustees may also borrow on the notes of the district ~~such sums as may be approved by the Public Utilities Commission~~ to meet the current expenses of the district in anticipation of the collection of rates.

**Sec. 19.** P & SL 1955, c. 195, § 7, 3rd sentence is repealed and the following enacted in place thereof:

**Rates shall be uniform within the district.**

**Sec. 20.** P & SL 1957, c. 59, § 15, first sentence, is amended to read:

All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the district and subject to the approval of the Public Utilities Commission to the extent provided for by the Revised Statutes of 1964, Title 35.

**Sec. 21.** P & SL 1957, c. 143, § 5 is repealed and the following enacted in place thereof:

**Sec. 5. Procedure in exercising right of eminent domain.** The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

**Sec. 22.** P & SL 1957, c. 143, § 15, first sentence is amended to read:

All individuals, firms and corporations, whether private or public, shall pay to the treasurer of said district the rates established by said board of trustees for the services used by them, and said rates shall be uniform within the territory supplied by the district and, **except as to sewer rates**, subject to the approval of the Public Utilities Commission.

**Sec. 23.** P & SL 1961, c. 154, § 16, last sentence is repealed and the following enacted in place thereof:

**Notes and bonds of said district shall be approved by the Public Utilities Commission only as required by the Revised Statutes of 1964, Title 35.**

**Sec. 24.** P & SL 1961, c. 154, § 20, 3rd ¶ is repealed and the following enacted in place thereof:

**The water rates, tolls, rents and entrance charges shall be subject to the approval of the Public Utilities Commission and both said water and sewer rates, tolls, rents and entrance charges shall be so established as to provide revenue for the following purposes:**

**Sec. 25.** P & SL 1963, c. 226, § 18, 2nd ¶, first sentence is amended to read:

Rates, tolls, rents and interest charges shall be uniform whenever the cost to the district of installation and maintenance of sewers and drains and their respective appurtenances and the costs 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, rent and entrance charges in sections where, for any reason, the cost to the district for 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 section where they apply; ~~and all such rates, rules and regulations of the district shall be subject to the approval of the Public Utilities Commission.~~

**Sec. 26.** P & SL 1963, c. 232, § 4, first ¶ is repealed and the following enacted in place thereof:

The procedure to be used in the exercise of the right of eminent domain shall be the same as that prescribed by the Revised Statutes of 1964, Title 38, section 1153.

**Sec. 27.** P & SL 1963, c. 232, § 8, first sentence is amended to read:

For accomplishing the purposes of this Act, said district, through its trustees, is authorized, with the approval of the Public Utilities Commission and a vote of the district, to borrow money from time to time, to an amount not exceeding \$300,000 and to issue therefor the interest-bearing negotiable notes of the district, maturing serially or otherwise and to make subsequent renewals of the same in whole or in part, and for said purposes and for the purpose of refunding any notes, bonds or other lawful indebtedness to establish a fund therefor.

**Sec. 28.** P & SL 1965, c. 239, § 14, last sentence is repealed and the following enacted in place thereof:

Notes and bonds of said district shall be approved by the Public Utilities Commission only to the extent required by the Revised Statutes of 1964, Title 35.

**Sec. 29.** P & SL 1967, c. 212, § 14, last sentence is amended to read:

All notes and bonds with the maturity of more than one year shall be first approved by the Public Utilities Commission if such approval is required by the Revised Statutes of 1964, Title 35.

**Sec. 30.** P & SL 1969, c. 107, § 21 is repealed.

**Sec. 31.** P & SL 1971, c. 79, § 19, last 2 sentences are repealed.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

## STATEMENT OF FACT

On December 26, 1974 the Public Utilities Commission ruled that, in the light of the decision of the Supreme Judicial Court in *In re: Milo Water District*, 128 Me. 531, it could not constitutionally regulate the rates of a few districts operating sewer systems unless it was authorized to regulate the rates of all such districts. A few districts operating sewer systems have charter language requiring such approval although many such districts are not so regulated. Accordingly with such an invalid provision in their charters the districts are not able effectively to implement their rates. The commission in its above ruling strongly suggested that this be resolved on an emergency basis during the early weeks of this session. A few districts also have other provisions in their charters which require Public Utilities Commission regulation, but which are also of questionable validity since the provisions are not found in the charters of other districts.

This bill deletes such provisions from the charters of various sanitary, sewerage, sewer, utility and water districts. The districts affected are as follows: Sanitary districts under Title 38; Augusta Sanitary District; Brownville Water District; Caribou Utilities District; Clinton Water District; Corinth Water District; Damariscotta Sewage District; Fort Fairfield Utilities District; Limerick Sewerage District; Limestone Water and Sewer District; Mars Hill Utility District; Milo Water District; Portland Water District; Presque Isle Sewer District; Richmond Utilities District; Rumford-Mexico Sewerage District; South Berwick Sewer District; Unity Utilities District; Waterville Sewerage District; Winthrop Sewer System and Westbrook Sewerage District.