

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 671

H.P. 501 House of Representatives, March 6, 1987
Reference to the Committee on Utilities suggested and
1,600 ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative MOHOLLAND of Princeton.
Cosponsored by Senators RANDALL of Washington, THERIAULT
of Aroostook and Representative TAMMARO of Baileyville.

STATE OF MAINE

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

1 AN ACT to Incorporate the Pembroke Utilities
2 District.
3

4 Emergency preamble. Whereas, Acts of the Legis-
5 lature do not become effective until 90 days after
6 adjournment unless enacted as emergencies; and

7 Whereas, the present water system is inadequate
8 and in need of immediate improvement and repair to
9 protect the quality of the water, health and well-
10 being of the inhabitants of the Town of Pembroke; and

11 Whereas, an adequate supply of pure water is es-
12 sential to the health and well-being of the inhabi-
13 tants of the Town of Pembroke; and

1 Whereas, it is desirable that a public district
2 be formed in Pembroke to be able to supply water to
3 the people of the area; and

4 Whereas, it is vital that this be done at once
5 for the benefit of the people of the area; and

6 Whereas, in the judgment of the Legislature,
7 these facts create an emergency within the meaning of
8 the Constitution of Maine and require the following
9 legislation as immediately necessary for the preser-
10 vation of the public peace, health and safety; now,
11 therefore,

12 Be it enacted by the People of the State of Maine as
13 follows:

14 Sec. 1. Territorial limits; name; purposes. The
15 territory comprising the Town of Pembroke and the in-
16 habitants of the town are created a body politic and
17 corporate under the name of "Pembroke Utilities Dis-
18 trict" for the purpose of supplying inhabitants and
19 others elsewhere with pure water and sewage disposal
20 services for domestic, sanitary, commercial, indus-
21 trial, agricultural, municipal purposes and for sell-
22 ing to the inhabitants and others in the district or
23 elsewhere. All incidental rights, powers and privi-
24 leges necessary to the accomplishment of the main ob-
25 jectives set forth in this chapter are granted to the
26 Pembroke Utilities District.

27 Sec. 2. Powers. The district, for the purposes
28 of its incorporation, may take, hold, divert, use and
29 distribute or sell water from any river; lake; pond;
30 stream; brook; spring; well or other source, natural
31 or artificial, in Pembroke; approved by the Depart-
32 ment of Human Services.

33 Sec. 3. Exclusions. Man-made ponds, springs,
34 wells supplying private dwellings and existing septic
35 systems of residents of the Town of Pembroke are ex-
36 cluded from the powers set out in section 2.

37 Sec. 4. Eminent domain. The district, for the
38 purposes of its incorporation, may take and hold

1 within the area covered by the district for public
2 uses real estate, personal estate and any interest
3 necessary for these purposes, by purchase, lease or
4 otherwise, and is provided to acquire for these pur-
5 poses any lands, interest in lands or water rights
6 necessary for erecting and maintaining plants and
7 works for flowage, pumping, supplying water through
8 its mains, reservoirs, preserving the purity of the
9 water, laying and maintaining mains, aqueducts and
10 other structures used for taking, distributing, dis-
11 charging and disposing of water, for forming basins
12 and reservoirs, for erection of buildings for pumping
13 works for use therein, for laying pipes and maintain-
14 ing them and for laying and maintaining conduits for
15 carrying, collecting and discharging water, filter-
16 ing, rectifying and treating plants, works and facil-
17 ities, for such other objects necessary, convenient
18 and proper for the purposes of its incorporation and
19 for rights-of-way of roadways to its sources of sup-
20 ply reservoirs, mains, aqueducts, structures, plants,
21 works facilities and distribution facilities and
22 lands.

23 The district may lay pipes, mains, conduits, aqu-
24 ueducts and other fixtures in and through the
25 streets, roads, ways and highways within the district
26 and across private lands, and maintain, repair and
27 replace all such pipes, mains, conduits, aqueducts
28 and fixtures as may be necessary and convenient for
29 any of its corporate purposes and authorities. When-
30 ever the district lays or installs any pipes, aque-
31 ducts or fixtures in any street, road, way or high-
32 way, it shall cause the same to be done with as lit-
33 tle obstruction as practicable to the public travel
34 and shall cause, at its own expense, without unneces-
35 sary delay, the earth and pavement removed by it to
36 be replaced so as to leave the surface in proper con-
37 dition.

38 Nothing contained in this Act may be construed as
39 authorizing the district to take by right of eminent
40 domain any of the property or facilities of any other
41 public utility, district or cooperative or district
42 used or acquired for future use by the owner in the
43 performance of a public duty, unless expressly autho-
44 rized or by subsequent Act of the Legislature or as
45 provided in section 11. Nothing contained in this Act

1 may be construed to empower the district to take by
2 eminent domain any dam, building or other improvement
3 or the real estate on which any dam, building or oth-
4 er improvement is situated.

5 Sec. 5. Procedure in exercising right of eminent
6 domain; assessment of damage; appeal procedure. After
7 the original acquisition for which provision is made
8 in sections 10 and 11, the district in exercising,
9 from time to time, any right of eminent domain con-
10 ferred upon it by law or through or under the fran-
11 chise of any water company acquired by it, shall file
12 written application with the Public Utilities Commis-
13 sion requesting its approval of the proposed taking.
14 The application shall describe the property or rights
15 to be taken, the purpose of the taking and shall name
16 all parties who may be interested. The commission
17 shall appoint a time for a hearing and shall require
18 such notice as the commission may direct to be given
19 to all persons interested, at least 14 days before
20 the date of the hearing. The commission may view the
21 premises if necessary, hear the parties and shall de-
22 termine how much, if any, of the property described
23 in the petition should be taken for the reasonable
24 purposes of the utilities district and for the safe,
25 economical and efficient furnishing of adequate water
26 service. In authorizing any taking, the commission
27 may attach such reasonable terms, limitations and re-
28 strictions as justice and equity may require. If the
29 commission finds that any of the property described
30 in the application is necessary for the aforesaid
31 purposes of the district, it shall make a certificate
32 containing a definite description of the property to
33 be taken and of any terms, restrictions and limita-
34 tions in connection therewith and shall furnish to
35 the district a true copy thereof, attested by the
36 secretary of the commission. When the copy of the
37 certificate is filed with the clerk of courts in
38 Washington County, the property shall be deemed and
39 treated as taken, provided that when the property is
40 held by a tenant for life and the reversion is con-
41 tingent as to the persons in whom it may vest at the
42 termination of the life estate, that fact shall be
43 stated in the application and in addition to the no-
44 tice to the tenant for life, notice shall be given in
45 such manner as it may deem proper by the commission
46 to all other interested parties. Entry may be made

1 on any private land prior to the filing of any such
2 application for the purpose of making surveys and the
3 district shall be responsible for any damage result-
4 ing from that entry. The district shall notify the
5 landowner 7 days prior to its entering upon the prop-
6 erty and possession may be had of the property de-
7 scribed in the certificate of the commission upon the
8 filing and recording in the Washington County Regis-
9 try of Deeds of such certificate as provided in this
10 Act, but title to that property shall not vest in the
11 district until payment has been made.

12 If any person sustaining damages by any taking
13 shall not agree with the trustees of the district
14 upon the sum to be paid, either party, upon petition
15 to the county commissioners of Washington County, may
16 have damages assessed by them. The procedure and all
17 subsequent proceedings and the rights of appeal shall
18 be had under the same restrictions, conditions and
19 limitations as are or may be prescribed in the case
20 of damages by the laying out of highways.

21 Sec. 6. Procedure if public utility must be
22 crossed. In case of any crossing of any public utili-
23 ty, unless consent is given by the company, district
24 of cooperative, owning or operating the public utili-
25 ty as to place, manner and conditions of the crossing
26 within 30 days after the consent is requested by the
27 district, the Public Utilities Commission, upon peti-
28 tion by the district, shall determine the place, man-
29 ner and conditions of the crossing. All work on the
30 property of the public utilities shall be done under
31 the supervision and to the satisfaction of the public
32 utility or as prescribed by the Public Utilities Com-
33 mission, but at the expense of the district.

34 Sec. 7. Trustees; how appointed; meetings; offi-
35 cers. All of the affairs of the district shall be
36 managed by a board of 5 trustees who shall be chosen
37 as provided in this Act. During each term of office
38 no member of the Pembroke Board of Selectmen may
39 serve as a trustee.

40 As soon as may be, after the acceptance of this
41 Act, the municipal officers of Pembroke shall appoint
42 5 trustees of the district to hold office as follows:
43 One to serve until the first annual meeting of the

1 district following the acceptance of the Act; one to
2 serve until the 2nd annual meeting; one to serve un-
3 til the 3rd annual meeting; one to serve until the
4 4th annual meeting; and one to serve until the 5th
5 annual meeting. When the term of each trustee expires
6 a successor trustee shall be elected for a term of 5
7 years or until a successor is elected and qualified
8 at the Pembroke town meeting on the last Monday in
9 March. Whenever any trustee who was a resident of the
10 district when elected ceases to be a resident of the
11 district, he vacates the office of trustee. Vacancy
12 in the office of trustee shall be filled for the un-
13 expired term at a special town meeting in Pembroke
14 unless the vacancy occurs within 3 months prior to
15 the next annual town meeting.

16 As soon as convenient after appointment, the
17 first board of trustees will hold a meeting at some
18 convenient place in the district, to be called by any
19 member in writing, designating the time and place and
20 delivered in hand to the other 4 members, not less
21 than 2 full days before the meeting. The board may
22 meet by agreement without the notice. It shall then
23 organize by electing from its own number a chairman
24 and a clerk and, not necessarily from its own number,
25 a treasurer. It shall adopt a corporate seal and may
26 adopt bylaws and perform any other acts within the
27 powers delegated to it by law. Following the election
28 of the new trustees at the Pembroke town meeting, the
29 trustees shall elect from their own number a treasur-
30 er to serve until the next annual meeting of the dis-
31 trict and until their respective successors are ap-
32 pointed and qualified.

33 The trustees, from time to time, may choose, em-
34 ploy and fix the compensation of any other necessary
35 officers and agents who shall serve at their plea-
36 sure. The treasurer shall furnish bond in such sum
37 and with such sureties as the trustees approve, the
38 cost to be paid by the district. Members of the board
39 of trustees shall be eligible to hold any office un-
40 der the board. The trustees shall receive as compen-
41 sation for their services an amount to be determined
42 by them not to exceed \$100 each year.

43 The trustees shall be sworn to the faithful per-
44 formance of their duties which shall include the du-

1 ties of any member who serves as clerk or clerk pro
2 tem. They shall make and publish an annual report,
3 including a report of the treasurer and an independ-
4 ent auditor's report. The report may be included in,
5 and published as part of, the annual town report of
6 the Town of Pembroke.

7 Sec. 8. Annual meeting of district. After the
8 acceptance of this charter and the organization of
9 the board, the annual meeting of the district for
10 seating of a trustee shall be held within the dis-
11 trict on the first Monday of each April, at such hour
12 and place as may be designated by resolution of the
13 board of trustees as provided in the bylaws and the
14 newly elected trustee will be seated at this meeting.

15 Sec. 9. District and town authorized to make
16 contracts. The district, through its trustees, may
17 contract with persons and corporations, including
18 Pembroke and Pembroke may contract with them for the
19 supply of water for municipal purposes. The Town of
20 Pembroke, by vote at its town meeting, may loan the
21 district a sum not exceeding \$1,000 to be used for
22 engineering, accounting and legal expenses in connec-
23 tion with the organization of the district or to be
24 repaid by the district from its initial long-term fi-
25 nancing.

26 Sec. 10. Authorized to acquire certain property
27 within the Town of Pembroke. The district, through
28 its trustees, may upon receipt of approval of the in-
29 habitants at its annual town meeting in March 1988,
30 acquire by purchase properties, franchises, rights
31 and privileges, including lands, waters, water
32 rights, reservoirs, pipes, fixtures, apparatus and
33 appliances used or usable in supplying water in the
34 district.

35 Sec. 11. Procedure in case trustees and property
36 owner or owners fail to agree on terms of purchase.
37 In case the trustees fail to agree with the property
38 owner or owners upon terms of purchase, the district,
39 through its trustees, may take the properties, inter-
40 est and franchises of the property owner or owners,
41 as set forth in section 10, in the manner provided
42 wherein the property owner or owners and its mortga-
43 gees, if any, or those having an interest in any re-

1 alty which is of record, shall be the parties defend-
2 ant. The district, through its trustees, may file a
3 petition in the clerk's office of the Superior Court
4 of Washington County, addressed to any justice of the
5 Superior Court who, after notice to the defendant,
6 shall, after hearing and within 45 days after the
7 filing of the petition, appoint 3 disinterested ap-
8 praisers for the purpose of fixing the valuations of
9 the property and franchises of the property owner or
10 owners described in section 10. The court may order
11 under proper terms the production for inspection and
12 viewing by the trustees or the appraisers of all
13 books and papers and real and personal property per-
14 taining to the issue on petition for same by the pe-
15 titioner unless they are voluntarily produced. The
16 appraisers shall, after due notice and hearing, fix
17 the valuation as of the date of filing the petition
18 of the properties and franchises at what they were
19 fairly and equitably worth so that the property owner
20 or owners shall receive just compensation for same.
21 The report of the appraisers or of a majority of
22 them, together with the stenographer's report certi-
23 fied by the appraisers as correct, shall be filed in
24 the clerk's office within 3 months after their ap-
25 pointment, unless extended by the court and any Jus-
26 tice of the Superior Court may, after notice and
27 hearing, confirm or reject the same or recommit the
28 report if the justice so requires. Upon confirmation
29 of the report, the court shall make final decree upon
30 the entire matter, including the application of the
31 purchase money and transfer of the property, juris-
32 diction over which is conferred and with power to en-
33 force the decree as in equity cases. All findings of
34 fact by the court and the appraisers shall be final,
35 but any party aggrieved may take exceptions as to any
36 matters of law, the same to be accompanied by so much
37 of the case as may be necessary to a clear under-
38 standing of the question raised. The exceptions shall
39 be claimed on the docket within 10 days after the fi-
40 nal decree is signed, entered and filed and notice
41 has been given by the clerk to the parties and the
42 exceptions so claimed shall be made up, allowed and
43 filed within the time, unless further time is granted
44 by the court or be agreement of parties. The excep-
45 tions shall be entered at the next term of the Law
46 Court to be held after the filing of the exceptions
47 and there heard, unless otherwise agreed, or the Law

1 Court for good cause shall order further time for
2 hearing. On payment or tender by the district of the
3 amount determined by the final decree and the per-
4 formance of all other terms and conditions imposed by
5 the court, the property owner or owners properties
6 and franchises, as described in section 10, shall be-
7 come vested in this district.

8 Sec. 12. Authorized to borrow money, to issue
9 bonds and notes. For accomplishing the purposes of
10 this Act, and for such other expenses as may be nec-
11 essary for the carrying out of the purposes, the dis-
12 trict, through its trustees may borrow money tempo-
13 rarily and issue its negotiable notes. For the pur-
14 pose of renewing and refunding the indebtedness so
15 created, of paying any necessary expenses and liabil-
16 ities incurred under this Act, including organiza-
17 tional and other necessary expenses and liabilities,
18 whether incurred by the district or the town, the
19 district being authorized to reimburse the town for
20 any such expenses incurred by them and in acquiring
21 properties, paying damages, laying pipes, mains, aq-
22 ueducts and conduits, constructing, maintaining and
23 operating a water plant or system and making renew-
24 als, additions, extensions and improvements to them
25 and to cover interest payments during the period of
26 construction, the district, through its trustees, may
27 also issue, from time to time, bonds, notes or other
28 evidences of indebtedness of the district in one se-
29 ries, or in separate series, in such amount or
30 amounts, bearing interest at such rate or rates and
31 having such terms and provisions as the trustees
32 shall determine.

33 The bonds, notes and evidences of indebtedness
34 may be issued to mature serially or made to run for
35 such periods as the trustees may determine, but none
36 of them shall run for a longer period than 40 years
37 from the date of original issue. Bonds, notes or evi-
38 dences of indebtedness may be issue with or without
39 provision for calling the same prior to maturity, and
40 if callable, may be made callable at par or at such
41 premium as the trustees may determine. All bonds,
42 notes or other evidences of indebtedness shall have
43 inscribed upon their face the words "Pembroke Utili-
44 ties District," shall be signed by the treasurer and
45 countersigned by the chairman of the board of trust-

1 ees of the district and, if coupon bonds are issued,
2 the interest coupons attached thereto shall bear the
3 facsimile signature of the treasurer.

4 All such bonds, notes and evidences of indebted-
5 ness issued by the district shall be legal obliga-
6 tions of the district, which is declared to be a qua-
7 si-municipal corporation within the meaning of the
8 Maine Revised Statutes, Title 30, section 5053, and
9 all provisions of that section shall be applicable.
10 The district may refund and reissue from time to
11 time, in one or in separate series, its bonds, notes
12 and other evidences of indebtedness and each autho-
13 rized issue shall constitute a separate loan. All
14 bonds, notes and evidences of indebtedness issued by
15 the district shall be legal investments for savings
16 banks in the State and shall be tax exempt.

17 Sec. 13. Property tax exempt. The property, both
18 real and personal, rights and franchises of the dis-
19 trict, shall be forever exempt from taxation.

20 Sec. 14. Water rates; application of revenue;
21 sinking fund. All individuals, firms and corpora-
22 tions, whether private, public or municipal, shall
23 pay to the treasurer of the district the rates estab-
24 lished by the board of trustees for the water used by
25 them. The rates shall be uniform within the territory
26 supplied by the district and shall be subject to the
27 approval of the Public Utilities Commission. The
28 rates shall be established to provide revenue for the
29 following purposes:

30 1. To pay current expenses for operating and
31 maintaining the water system, including, without lim-
32 itation, the purchase of electricity and to provide
33 for the extensions and renewals as may become neces-
34 sary;

35 2. To provide for the payment of the interest on
36 the indebtedness created by the district;

37 3. To provide each year a sum equal to not less
38 than 1% nor more than 5% of the entire indebtedness
39 created by the district other than serial bonds and
40 notes, which sum shall be turned into a sinking fund
41 and kept there to provide for the extinguishment of

1 the indebtedness, or if serial bonds or notes are is-
2 sued, to pay the principal of the bonds and notes
3 payable in that year. The money set aside for the
4 sinking fund shall be devoted to the retirement of
5 the obligations of the district or invested in such
6 securities as savings banks, fiduciaries or trustees
7 in this State are now or hereafter allowed to hold;
8 and

9 4. If any surplus remains at the end of the
10 year, it may be turned into the sinking fund or used
11 for such other purposes of the district as the trust-
12 ees may determine.

13 The rates established pursuant to this section
14 shall be sufficient to provide revenue for the pur-
15 poses of this Act and for all other purposes of the
16 district, without the need for any financial assist-
17 ance from the Town of Pembroke, other than the normal
18 payment of water charges for services rendered and
19 the loan or loans for initial funds as set forth in
20 section 9.

21 Sec. 15. Existing laws not affected; rights con-
22 ferred subject to law. Nothing contained in this Act
23 is intended to repeal, or may be construed as repeal-
24 ing the whole or any part of any existing law, and
25 all the rights and duties mention in this Act, except
26 those referred to in section 11, shall be exercised
27 and performed in accordance with all the applicable
28 provisions of the Maine Revised Statutes, Title 35
29 and all Acts amendatory thereof or additional there-
30 to.

31 Sec. 16. Separability clause. If any section or
32 part of a section of this charter shall be held
33 invalid by a court of competent jurisdiction, the
34 holding shall not affect the remainder of this
35 charter, it being the intention that the remaining
36 portions of this charter shall stand, notwithstanding
37 the unconstitutionality or invalidity of any section,
38 sentence, clause or phrase.

39 Sec. 17. Referendum; effective date. In view of
40 the emergency cited in the preamble, this Act shall
41 take effect when approved only for the purpose of
42 permitting its submission to the legal voters of the

1 district at a special election or elections called
2 and held for the purpose. The election shall be
3 called by the municipal officers of the Town of
4 Pembroke and shall be held at the regular voting
5 places; the dates of the elections shall be deter-
6 mined by the municipal officers, but the first meet-
7 ing of the town shall not be later than the first day
8 of December, 1987. These special elections shall be
9 called, advertised and conducted according to the law
10 relating to municipal elections, provided that the
11 board of registration shall not be required to pre-
12 pare, nor the town clerk to post, a new list of vot-
13 ers. For this purpose, the board of registration
14 shall be in session on the 3 secular days next pre-
15 ceding the elections, the first and 2nd days to be
16 devoted to registration of voters and the last day to
17 enable the board to verify the corrections of the
18 lists and to complete and close up their records of
19 the session. The town clerk shall reduce the subject
20 matter of this Act to the following question:

21 "Shall 'The Act to Incorporate the Pembroke Util-
22 ities District' passed by the Legislature, be ac-
23 cepted?"

24 The voters shall indicate by a cross or check
25 mark placed against the words "Yes" or "No" their
26 opinion of the same. This Act shall take effect for
27 all the purposes hereof immediately upon its accept-
28 ance by a majority of the legal voters of the dis-
29 trict voting at the elections, but only if the total
30 number of votes cast for and against the acceptance
31 of this Act in the special elections equals or ex-
32 ceeds 20% of the total number of names on the check
33 list of voters of the town provided for in this Act,
34 which check list shall be used at such elections, but
35 failure of approval by the necessary majority or per-
36 centage of voters shall not prevent subsequent elec-
37 tions.

38 The result of these elections shall be declared
39 by the municipal officers of the town and due certifi-
40 cates thereof filed by the town clerk with the Sec-
41 retary of State.

42 Emergency clause. In view of the emergency cited
43 in the preamble, this Act shall take effect when ap-
44 proved.

STATEMENT OF FACT

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The purpose of this bill is to address current inadequacies in the water supply system in Pembroke by establishing the Pembroke Utilities District.

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