

MAINE STATE LEGISLATURE

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(EMERGENCY)
(NEW DRAFT OF H.P. 501, L.D. 671)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2294

H.P. 1675 House of Representatives, February 18, 1988
Reported by Representative WEYMOUTH from the Committee on
Utilities and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored 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-EIGHT

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

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

1 Whereas, the present water system is inadequate
2 and in need of immediate improvement and repair to
3 protect the quality of the water, health and
4 well-being of the inhabitants of the Town of Pembroke;
5 and

6 Whereas, an adequate supply of pure water is
7 essential to the health and well-being of the
8 inhabitants of the Town of Pembroke; and

9 Whereas, it is desirable that a public district be
10 formed in Pembroke to be able to supply water to the
11 people of the area; and

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

14 Whereas, in the judgment of the Legislature, these
15 facts create an emergency within the meaning of the
16 Constitution of Maine and require the following
17 legislation as immediately necessary for the
18 preservation of the public peace, health and safety;
19 now, therefore,

20 Be it enacted by the People of the State of Maine as
21 follows:

22 **Sec. 1. Territorial limits; name; purposes.**
23 The territory comprising the Town of Pembroke and the
24 inhabitants of the town are created a body politic and
25 corporate under the name of "Pembroke Utilities
26 District" for the purpose of supplying inhabitants and
27 others elsewhere with pure water and sewage disposal
28 services for domestic, sanitary, commercial,
29 industrial, agricultural or municipal purposes and for
30 selling to the inhabitants and others in the district
31 or elsewhere. All incidental rights, powers and
32 privileges necessary to the accomplishment of the main
33 objectives set forth in this Act are granted to the
34 Pembroke Utilities District.

35 **Sec. 2. Powers.** The district, for the purposes
36 of its incorporation, may take, hold, divert, use and
37 distribute or sell water from any source in Pembroke,
38 natural or artificial, approved by the Department of

1 Human Services. The district may not take, withdraw
2 or divert water from any source for those purposes set
3 forth in this Act, unless it has filed a written
4 petition and obtained the approval of the Public
5 Utilities Commission. The petition shall include a
6 plan for the taking, withdrawal or diversion. The
7 petition and plan shall set forth adequate information
8 upon which findings may be made regarding the nature,
9 capacity, safe yield and rechargeability of the
10 source, the amount of water to be taken over time and
11 other existing and projected uses and demands on the
12 source. The commission may by rule or order prescribe
13 other information to be contained in the petition and
14 plan. The commission may not approve a petition
15 unless it finds that the plan ensures that adequate
16 water remains in the source to meet the reasonable
17 needs of existing and projected demands on the
18 source. The commission may impose reasonable terms,
19 conditions or other requirements on the plan. The
20 commission shall issue its order approving or
21 disapproving the plan within 9 months after it
22 determines the petition to be complete.

23 Sec. 3. Exclusions. Man-made ponds, springs,
24 wells supplying private dwellings and existing septic
25 systems of residents of the Town of Pembroke are
26 excluded from the powers set out in section 2.

27 Sec. 4. Eminent domain. The district, for the
28 purposes of its incorporation, may take and hold
29 within the area covered by the district for public
30 uses real estate, personal property and any interest
31 necessary for these purposes, by purchase, lease or
32 otherwise. The district is authorized to acquire for
33 these purposes any lands, interest in lands or water
34 rights necessary for erecting and maintaining plants
35 and works for flowage, pumping, supplying water
36 through its mains; for forming basins and reservoirs,
37 preserving the purity of the water; for laying and
38 maintaining mains, aqueducts and other structures used
39 for taking, distributing, discharging and disposing of
40 water; for erection of buildings for pumping works;
41 for laying pipes and maintaining them; for laying and
42 maintaining conduits for carrying, collecting and

1 discharging water; for filtering, rectifying and
2 treating plants, works and facilities; for such other
3 objects necessary, convenient and proper for the
4 purposes of its incorporation; and for rights-of-way
5 of roadways to its sources of supply reservoirs,
6 mains, aqueducts, structures, plants, works
7 facilities, distribution facilities and lands.

8 The district may lay pipes, mains, conduits,
9 aqueducts and other fixtures in and through the
10 streets, roads, ways and highways within the district
11 and across private lands, and maintain, repair and
12 replace all such pipes, mains, conduits, aqueducts and
13 fixtures as may be necessary and convenient for any of
14 its corporate purposes and authorities. Whenever the
15 district lays or installs any pipes, aqueducts or
16 fixtures in any street, road, way or highway, it shall
17 cause the same to be done with as little obstruction
18 as practicable to the public travel and shall cause,
19 at its own expense, without unnecessary delay, the
20 earth and pavement removed by it to be replaced so as
21 to leave the surface in proper condition.

22 Nothing contained in this Act may be construed as
23 authorizing the district to take by right of eminent
24 domain any of the property or facilities of any other
25 public utility, district or cooperative or district
26 used or acquired for future use by the owner in the
27 performance of a public duty, unless expressly
28 authorized or by subsequent Act of the Legislature.
29 Nothing contained in this Act may be construed to
30 empower the district to take by eminent domain any
31 dam, building or other improvement or the real estate
32 on which any dam, building or other improvement is
33 situated.

34 **Sec. 5. Procedure in exercising right of eminent**
35 **domain; assessment of damage; appeal procedure.** In
36 exercising the right of eminent domain in the taking
37 of lands, interests in lands or water rights, the
38 district shall file in the office of the county
39 commissioners of Washington County and record in the
40 Washington County registry of deeds plans of the
41 location of all such property to be taken, with an
42 appropriate description and the names of the owners,

1 if known. Notice of the filing shall be sent by mail
2 to the owners at the address appearing on the tax
3 records of the municipality in which the land is
4 located. If, for any reason, the district fails to
5 acquire the property which it is authorized to take
6 and which is described in that location, or if the
7 location recorded is defective or uncertain, it may,
8 at any time, correct and perfect that location and
9 file a new description. In such case, the district is
10 liable in damages only for property for which the
11 owner had not previously been paid, to be assessed as
12 of the time of the original taking, and the district
13 is not liable for any acts which would have been
14 justified if the original taking had been lawful. No
15 entry may be made on any private lands, except to make
16 surveys, until the expiration of 10 days from that
17 filing, at which time, possession may be had of all
18 lands, interests in lands or water rights so taken,
19 but title shall not vest in the district until payment
20 is made.

21 If any person sustaining damages by any taking
22 does not agree with the trustees of the district upon
23 the sum to be paid, either party, upon petition to the
24 county commissioners of Washington County, may have
25 damages assessed by them. The procedure and all
26 subsequent proceedings and the rights of appeal shall
27 be had under the same restrictions, conditions and
28 limitations as are or may be prescribed in the case of
29 damages by the laying out of highways.

30 **Sec. 6. Procedure if public utility must be**
31 **crossed.** In case of any crossing of any public
32 utility, unless consent is given by the company,
33 district or cooperative owning or operating the public
34 utility as to place, manner and conditions of the
35 crossing within 30 days after the consent is requested
36 by the district, the Public Utilities Commission, upon
37 petition by the district, shall determine the place,
38 manner and conditions of the crossing. All work on the
39 property of the public utilities shall be done under
40 the supervision and to the satisfaction of the public
41 utility or as prescribed by the Public Utilities
42 Commission, but at the expense of the district.

1 **Sec. 7. Trustees; how appointed; meetings;**
2 **officers.** All of the affairs of the district shall
3 be managed by a board of 5 trustees who shall be
4 chosen as provided in the Maine Revised Statutes,
5 Title 35-A, chapter 63. During each term of office no
6 member of the Pembroke Board of Selectmen may serve as
7 a trustee.

8 As soon as possible after the acceptance of this
9 Act, the municipal officers of Pembroke shall appoint
10 5 trustees of the district to hold office as follows:
11 One to serve until the first annual meeting of the
12 district following the acceptance of the Act; 2 to
13 serve until the 2nd annual meeting; and 2 to serve
14 until the 3rd annual meeting. When the term of each
15 trustee expires, a successor trustee shall be elected
16 in accordance with the Maine Revised Statutes, Title
17 35-A, chapter 63, for a term of 3 years or until a
18 successor is elected and qualified at the Pembroke
19 town meeting on the last Monday in March. Whenever any
20 trustee who was a resident of the district when
21 elected ceases to be a resident of the district, he
22 vacates the office of trustee. Vacancy in the office
23 of trustee shall be filled for the unexpired term at a
24 special town meeting in Pembroke unless the vacancy
25 occurs within 3 months prior to the next annual town
26 meeting.

27 Organization of the board of trustees shall be in
28 accordance with the Maine Revised Statutes, Title
29 35-A, chapter 63. The trustees shall have the powers
30 specified in the Maine Revised Statutes, Title 35-A,
31 chapter 63.

32 All decisions of the board of trustees shall be by
33 a majority of those present and voting. A quorum of
34 the board of trustees shall be 3 trustees.

35 Trustees' compensation shall be set in accordance
36 with the Maine Revised Statutes, Title 35-A, chapter
37 63.

38 **Sec. 8. Annual meeting of district.** After the
39 acceptance of this charter and the organization of the
40 board, the annual meeting of the district for

1 seating of a trustee shall be held within the district
2 on the first Monday of each April, at such hour and
3 place as may be designated by resolution of the board
4 of trustees as provided in the bylaws and the newly
5 elected trustee will be seated at this meeting.

6 **Sec. 9. District and town authorized to make**
7 **contracts.** The district, through its trustees, may
8 contract with persons and corporations, including
9 Pembroke, and Pembroke may contract with them for the
10 supply of water for municipal purposes. The Town of
11 Pembroke, by vote at its town meeting, may loan the
12 district a sum not exceeding \$5,000 to be used for
13 engineering, accounting and legal expenses in
14 connection with the organization of the district and
15 to be repaid by the district from its initial
16 long-term financing.

17 **Sec. 10. Authorized to borrow money, to issue**
18 **bonds and notes.** For accomplishing the purposes of
19 this Act, and for such other expenses as may be
20 necessary for the carrying out of the purposes, the
21 district, through its trustees, may accept state,
22 federal or municipal grants and may borrow money
23 temporarily and issue its negotiable notes. For the
24 purpose of renewing and refunding the indebtedness so
25 created, of paying any necessary expenses and
26 liabilities incurred under this Act, including
27 organizational and other necessary expenses and
28 liabilities, whether incurred by the district or the
29 town, the district being authorized to reimburse the
30 town for any such expenses incurred by them and in
31 acquiring properties; paying damages; laying pipes,
32 mains, aqueducts and conduits; constructing,
33 maintaining and operating a water plant or system and
34 making renewals, additions, extensions and
35 improvements to them and to cover interest payments
36 during the period of construction; the district,
37 through its trustees, may also issue, from time to
38 time, in accordance with the Maine Revised Statutes,
39 Title 35-A, chapter 63, bonds, notes or other
40 evidences of indebtedness of the district in one
41 series, or in separate series, in such amount or
42 amounts, bearing interest at such rate or rates and
43 having such terms and provisions as the trustees shall

1 determine.

2 The bonds, notes and evidences of indebtedness may
3 be issued to mature serially or made to run for such
4 periods as the trustees may determine, but none of
5 them shall run for a longer period than 40 years from
6 the date of original issue. Bonds, notes or evidences
7 of indebtedness may be issued with or without
8 provision for calling the same prior to maturity, and
9 if callable, may be made callable at par or at such
10 premium as the trustees may determine. All bonds,
11 notes or other evidences of indebtedness shall have
12 inscribed upon their face the words "Pembroke
13 Utilities District," shall be signed by the treasurer
14 and countersigned by the chairman of the board of
15 trustees of the district and, if coupon bonds are
16 issued, the interest coupons attached thereto shall
17 bear the facsimile signature of the treasurer.

18 All such bonds, notes and evidences of
19 indebtedness issued by the district shall be legal
20 obligations of the district, which is declared to be a
21 quasi-municipal corporation within the meaning of the
22 Maine Revised Statutes, Title 30, section 5053, and
23 all provisions of that section shall be applicable.
24 The district may refund and reissue from time to time,
25 in one or in separate series, its bonds, notes and
26 other evidences of indebtedness and each authorized
27 issue shall constitute a separate loan. All bonds,
28 notes and evidences of indebtedness issued by the
29 district shall be legal investments for savings banks
30 in the State and shall be tax exempt.

31 **Sec. 11. Water rates; application of revenue;**
32 **sinking fund.** The rates established pursuant to this
33 section shall be sufficient to provide revenue for the
34 purposes of this Act and for all other purposes of the
35 district, without the need for any financial
36 assistance from the Town of Pembroke, other than the
37 normal payment of water charges for services rendered
38 and the loan or loans for initial funds as set forth
39 in section 9. Individuals, firms and corporations,
40 whether private, public or municipal, shall pay to the
41 treasurer or other designated officer of the district
42 the rates established by the board of

1 trustees for the water used by them. The rates shall
2 be established in accordance with the Maine Revised
3 Statutes, Title 35-A, chapter 61, so as to provide for
4 the purposes set forth in that Title.

5 **Sec. 12. Existing laws not affected; rights**
6 **conferred subject to law.** Nothing contained in this
7 Act is intended to repeal, or may be construed as
8 repealing the whole or any part of any existing law,
9 and all the rights and duties mentioned in this Act
10 shall be exercised and performed in accordance with
11 all the applicable provisions of the Maine Revised
12 Statutes, Title 35-A, and all Acts that amend or are
13 additional to that Title.

14 **Sec. 13. Separability clause.** If any section
15 or part of a section of this charter shall be held
16 invalid by a court of competent jurisdiction, the
17 holding shall not affect the remainder of this
18 charter, it being the intention that the remaining
19 portions of this charter shall stand, notwithstanding
20 the unconstitutionality or invalidity of any section,
21 sentence, clause or phrase.

22 **Sec. 14. Referendum; effective date.** In view of
23 the emergency cited in the preamble, this Act shall
24 take effect when approved only for the purpose of
25 permitting its submission to the legal voters of the
26 district at a special election or elections called and
27 held for the purpose. The election shall be called by
28 the municipal officers of the Town of Pembroke and
29 shall be held at the regular voting places; the dates
30 of the elections shall be determined by the municipal
31 officers, but the first meeting of the town shall not
32 be later than the first day of December 1988. These
33 special elections shall be called, advertised and
34 conducted according to the law relating to municipal
35 elections, provided that the board of registration
36 shall not be required to prepare, nor the town clerk
37 to post, a new list of voters. For this purpose, the
38 board of registration shall be in session on the 3
39 secular days next preceding the elections, the first
40 and 2nd days to be devoted to registration of voters
41 and the last day to enable the board to verify the

1 corrections of the lists and to complete and close up
2 their records of the session. The town clerk shall
3 reduce the subject matter of this Act to the following
4 question:

5 "Shall 'The Act to Incorporate the Pembroke
6 Utilities District' passed by the Legislature, be
7 accepted?"

8 The voters shall indicate by a cross or check mark
9 placed against the words "Yes" or "No" their opinion
10 of the same. This Act shall take effect for all the
11 purposes hereof immediately upon its acceptance by a
12 majority of the legal voters of the district voting at
13 the elections, but only if the total number of votes
14 cast for and against the acceptance of this Act in the
15 special elections equals or exceeds 20% of the total
16 number of names on the checklist of voters of the town
17 provided for in this Act, which checklist shall be
18 used at such elections, but failure of approval by the
19 necessary majority or percentage of voters shall not
20 prevent subsequent elections.

21 The result of these elections shall be declared by
22 the municipal officers of the town and due
23 certificates thereof filed by the town clerk with the
24 Secretary of State.

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

1 STATEMENT OF FACT

2 This new draft makes changes to conform to the
3 uniform provisions of the Maine Revised Statutes,
4 Title 35-A, relating to water districts and adds a
5 requirement of Public Utilities Commission approval of
6 any plan to remove water from a source within the
7 district.

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