

MAINE STATE LEGISLATURE

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N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 425

H. P. 760

House of Representatives, February 10, 1943.

Referred to Committee on Public Utilities, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Libby of Caribou.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT Creating the Caribou Utilities District.

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

Sec. 1. Territorial limits and corporate name and purposes. The inhabitants and territory within the town of Caribou in the county of Aroostook shall be, and hereby are, constituted a body politic and corporate under the name of the Caribou Utilities District for the purpose of supplying the town of Caribou and the inhabitants of said town or any part of said town with pure water for domestic, commercial, sanitary and municipal purposes, including the extinguishment of fires, and of supplying the town of Caribou and the inhabitants of said town or any part of said town with suitable and adequate sewerage facilities, and for the purpose of supplying electric light and power to the town of Caribou and the inhabitants thereof and to those parts of other towns which are now served by the Caribou Water, Light and Power Company, and other sections of said towns, and the inhabitants thereof.

Sec. 2. Powers of said Caribou Utilities District. Said Caribou Utilities District is hereby authorized for the purposes aforesaid to take, collect, store, flow, use, detain, distribute and convey to the town of Caribou or

any part thereof water from any lake, pond, stream, or river and from any surface or underground brook, spring or vein of water in said town of Caribou, and is also authorized to locate, construct and maintain dams, cribs, reservoirs, locks, gates, sluices, aqueducts, pipes, conduits, stand-pipes, hydrants, pumping stations and other necessary structures and equipment therefor, and erect pole and lines and do all things necessary to furnish water, light, power and sewerage and drainage for public purposes and for public health, comfort and convenience of the inhabitants of said district, and to supply electric light and power to the inhabitants of towns and plantations now supplied by the Caribou Water, Light and Power Company and other parts of said towns.

Sec. 3. Right of eminent domain conferred. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase, eminent domain, or otherwise, any land or interest therein, or water rights necessary for erecting and maintaining dams, for flowage, for power, for pumping its water supply through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining aqueducts and other structures, for taking, distributing, discharging and disposing of water and for rights of way or roadways to its sources of supply, its dams, power stations, reservoirs, mains, aqueducts, structures and lands, also all thing necessary for supplying water as aforesaid, electric lighting and power. The said district may, for the purposes outlined in this chapter, do any and all things necessary in providing a system of sewerage and drainage for public purposes and for the health, comfort and convenience of the inhabitants of said district, and either by construction or purchase, but nothing in this shall be construed to give said district the power to own property outside the limits of said town of Caribou except for the purpose of supplying electric light and power to other towns now served by the Caribou Water, Light and Power Company; provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty unless expressly authorized thereto herein or by subsequent act of the legislature.

Sec. 4. Authorized to lay mains, pipes, conduits, etc. through public ways and across private lands. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the town of Caribou and other towns served by it and across private lands therein, and to maintain, repair and replace all such pipes, mains, conduits, aqueducts,

poles and wires, and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipes, aqueducts, conduits, or pole lines in any street, road way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper conditions.

Sec. 5. Procedure in exercising right of eminent domain. After the original acquisition for which provision is made in sections 9 and 11 of this act, the said district in exercising, from time to time, any right of eminent domain conferred upon it by law or through or under the franchise of any company by it acquired shall file written application with the public utilities commission requesting its approval of the proposed taking. Such application shall describe the property or rights to be taken, the purpose of the taking, and shall name all parties who may be interested therein; the commission thereupon shall appoint a time for a hearing near the premises, and shall require such notice as the commission may direct to be given to the persons interested at least 14 days before the date of the hearing; the commission then shall view the premises, hear the parties, and shall determine how much, if any, of the property described in the petition should be taken for the reasonable purposes of the district; and in authorizing any taking the commission may attach such reasonable terms, limitations and restrictions as justice may require. If the commission shall find that any of the property described in the application is necessary for the aforesaid purposes of the district, it shall make a certificate containing a definite description of the property to be taken, and of any terms, restrictions and limitations in connection therewith, and shall furnish to the district a true copy thereof, attested by the clerk of the commission; and when such copy of the certificate is filed with the clerk of courts in the county where the property lies, the property shall be deemed and treated as taken; provided, however, that when property is held by a tenant for life and the reversion is contingent as to the persons in whom it may vest at the termination of the life estate, such fact shall be stated in the application and the commission, in addition to the notice to the tenant for life, shall require notice by publication, in such manner as it may deem proper, to all others interested. Entry may be made on any private land prior to the filing of any such application for the purpose of making surveys, the district being responsible for any damage resulting from such entry, and possession may be had of the property described in the certificate of the commission forthwith upon the filing and recording of such certificate as

hereinbefore provided, but title to such property shall not vest in the district until payment therefor has been made.

Sec. 6. Adjustment of damages. If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Aroostook county may have said damages assessed by them; the procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

Sec. 7. Procedure in crossing of railroads or utility rights of way. In case of any crossing of a railroad, or the right of way occupied by the transmission or distribution lines of an electric company, unless consent is given by the company owning or operating such railroad or transmission line, as to place, manner and conditions of the crossing, within 30 days after such consent is requested by such district, the public utilities commission shall, upon petition setting forth a description of said premises and the reasons for said crossing after notice given as said commission may prescribe, determine the place, manner and conditions of such crossing; and all work within the limits of such railroad location or right of way shall be done under the supervision and to the satisfaction of such railroad company or electric company as the case may be, but at the expense of the district unless otherwise ordered by said public utilities commission, which shall award to said railroad or electric company any damage suffered by it occasioned by said crossing.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of trustees composed of 3 members who shall be bona fide residents of the town of Caribou and who shall be elected by the Caribou town council, within 30 days after the acceptance of this act by the inhabitants of said district as hereinafter provided, but none of the members of the Caribou town council shall be eligible for such office of trustee, and whenever any of said trustees becomes a member of said Caribou town council, he shall automatically cease to be such trustee. As soon as convenient after the members of said board have been appointed, said trustees shall hold a meeting in the town of Caribou, and organize by the election of a 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 trustees. Whenever a vacancy occurs in the office of president, clerk

or treasurer it shall be promptly filled by said 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 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 of Caribou following the acceptance of this act, and thereafter the term of office of a trustee shall expire with the end of each municipal year, and whenever the term of office of a trustee expires, the body which appointed said 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 town of Caribou he vacates the office of trustee. They may also ordain and establish such by-laws as are necessary for their own convenience and the proper management of the affairs of the district. Said trustees may procure an office and incur such expense 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, or the clerk of the town of Caribou.

Sec. 9. Authorized to acquire property and franchises of Caribou Water, Light and Power Company. Said utilities district is hereby authorized and empowered to acquire by purchase or by the exercise of the right of eminent domain, which right is hereby expressly delegated to said district for said purpose, the entire plant, property, franchises, property rights, privileges and assets owned, used or exercised by Caribou Water, Light and Power Company and also the entire plant, property, franchises, property rights, privileges and assets owned, used or exercised by the Caribou Sewer Company, including all land, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools, poles, wiring and all apparatus and appliances used or usable in supplying water, light and power and sewerage facilities and drainage in the territory served by either of said companies. If and when so acquired the said 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 said Caribou Water, Light and Power Company and the Caribou Sewer Company, and may do and perform any and all of the acts and things authorized by the original charter of said Caribou Water, Light and Power Company, and also the original charter of said Caribou Sewer Company, insofar as they are not inconsistent with the provisions of this act.

Sec. 10. Valid contracts of present company to be assumed by district.

All valid contracts now existing between the Caribou Water, Light and Power Company, or the Caribou Sewer Company, and said town or other towns and any persons or corporations for supplying water, light and power, sewerage or drainage in the town of Caribou or elsewhere shall in the event of such acquisitions be assumed and carried out by said Caribou Utilities District.

Sec. 11. Procedure in case trustees fail to agree on terms of purchase.

In case said trustees fail to agree with either said Caribou Water, Light and Power Company or with said Caribou Sewer Company upon the terms of purchase of either or both of said properties on or before the 1st day of January, 1943, said district through its board of trustees aforesaid is hereby authorized to take the plant, property and franchises of either or both of said companies as for public use by separate petition therefor in the manner hereinafter provided. In the event petitions are filed against both companies, they shall be acted upon separately. Said district through its trustees is hereby authorized after July 1, 1943 and before July 1, 1945 to file its petition, or petitions if proceedings are necessary against both companies, in the clerk's office of the supreme judicial court for the county of Aroostook in term time or in vacation addressed to any justice of said court, who after due notice to the company or companies interested and their mortgagees shall after hearing and within 30 days after the date at which said petition is returnable, appoint 3 disinterested appraisers, one of whom shall be learned in the law and none of whom shall be residents of Aroostook county, for the purpose of fixing a valuation of said plant, property and franchises. In the event petitions are filed against both companies the court may in its discretion appoint the same appraisers. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner, may fix a time at which the said company shall file in the clerk's office of the supreme judicial court for the county of Aroostook for the inspection of the petitioner, the following: first, schedule showing the names, residences and character of service of all its customers on the 1st day of July, 1943, with the rate charged therefor; second, copies of all contracts in force on said 1st day of July, 1943;

third, an itemized statement of the gross income earned during its last complete fiscal year and up to said 1st day of July, 1945, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; fourth, a memorandum of all real estate, water rights, or interest therein, owned or controlled on said 1st day of July, 1943, with such brief description thereof as will reasonably identify the same; fifth, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate-boxes, shut-off boxes, fixtures and machinery, poles, power lines, power stations, meters, transformers and all physical elements in such water, light, power or sewerage system as the case may be, giving in detail quantities, size, lengths and specifying the streets, roads or ways where situated; sixth, an itemized list of all tools, apparatus, appliances and supplies used or usable in maintaining said electric light, power, water or sewerage system as the case may be on said 1st day of July, 1943. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true condition of the physical properties of the said light, power, water or sewerage company as the case may be, in the presence of the officers or agents of said companies, the entire expense thereof to be borne by said district.

The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions.

The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said company shall receive just compensation for all and the same. The 1st day of July, 1943, shall be the date as of which the valuation aforesaid shall be fixed from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to said district. The report of said appraisers or a majority of them shall

be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same or recommit it if justice so requires.

Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all questions of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before appraisers proceed to fix the valuation of the property, plant and franchises of said company. Upon the confirmation of said report the court so sitting shall thereupon after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the questions raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered, and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon.

Before said plant, property and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided such justice shall, upon motion of either party, after notice and hearing take account of all receipts and expenditures, properly had or incurred by the company, from and after said 1st day of July, 1943, and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from, the amount to be paid under such final decree, as the case may be. All findings of fact by such justice at such hearing shall be final. On payment or tender by said district of the amount so determined and the performances of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of said company used and usable in supplying water, light, power or sewerage facilities as the case may be in the town of Caribou or elsewhere shall become vested in said district. Either party may file and prosecute motions and petitions relat-

ing to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties.

If a vacancy occurs at any time in said board of appraisers from any cause, such sitting justice, or in case of his inability to act, any justice of said court appointed by the chief justice may after notice and hearing, appoint a new appraiser or appraisers and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require. Nothing herein contained shall preclude said district from acquiring said properties from said company at any time by mutual agreement.

Sec. 12. Authorized to negotiate temporary loans; and to issue notes and bonds; declared a quasi-municipal corporation; notes and bonds legal investments for savings banks. For accomplishing the purposes of this act, said district, through its trustees, is authorized to borrow money temporarily, and to issue therefor the interest bearing negotiable notes of the district, and for the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district, in reimbursing said town, in acquiring the aforesaid properties, privileges and franchises of the Caribou Water, Light and Power Company and the Caribou Sewer Company, by purchase or otherwise, of securing sources of supply, taking water and land, paying damages, laying pipes, erecting poles and wires, constructing, maintaining and operating a water, light and power plant, and sewerage and drainage system and making extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount necessary in the judgment of the trustees therefor. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the provisions of sections 116 and 117 of chapter 56 of the revised statutes, and all the provisions of said sections shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks and exempt from taxation.

Sec. 13. Property, tax exempt. The property of said Caribou Utilities District shall be exempt from all taxation in the town of Caribou.

Sec. 14. Execution of instruments. Any and all instruments to be executed by the district may, upon authorization by the board of trustees, be executed in its behalf by its president and treasurer who may impress its corporate seal and make any necessary acknowledgment thereof, except

that upon interest coupons attached to any bonds to be issued the facsimile signature of the treasurer shall be sufficient.

Sec. 15. Rates; application of revenue; sinking fund. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees for the service used by them, and said rates shall be uniform within the territory supplied by the district and subject to approval of the public utilities commission. Said rates shall be so established as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the water, light, power and sewer system.

2. To provide for the payment of the interest on the indebtedness created or assumed by the district.

3. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of said indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. Provided, however, that the trustees, may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than 1% of the amount of the bonds so issued shall mature and be retired each year.

4. If any surplus remains at the end of the year, it may be turned into the sinking fund.

Sec. 16. Incidental powers granted. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sec. 17. Local referendum for town of Caribou; meeting, how called; form of ballot; certificate to secretary of state. This act shall take effect except as hereinafter provided when approved by a majority of the legal voters of said proposed district present and voting for or against the acceptance of the district as hereinafter provided for in this section at an election specially called and held for the purpose, by the town council of the town of Caribou, to be held at the voting places in the town at the next regular town meeting or at a special town meeting called before that time and after this act shall become a law, but if and only if the total number

of votes cast for and against the acceptance of this act in said special election equals or exceeds 25% of the total vote for all candidates for governor cast in said town at the previous gubernatorial election. Such special election shall be called, advertised and conducted according to the law relating to municipal elections, provided, however, that the board of registration in said town of Caribou shall not be required to prepare for posting or the town clerk to post a new list of voters, and for the purpose of registration of voters, said board shall be in session the 3 secular days next preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said sessions. The town clerk shall reduce the subject of this act to the following question: "Shall the act to incorporate the Caribou Utilities District be accepted?" and the voters shall indicate by a cross placed against the words "Yes" or "No" their opinion of the same. A check list shall be used at such election. The result shall be declared by the municipal officers and due certificate thereof filed with the secretary of state by the clerk of said town.

Sec. 18. Act void unless property of water, light and power company is acquired. If said utilities district shall fail to purchase or file its petition to take by eminent domain, before July 1, 1946, as in this act provided, the plant, property, franchises, rights and privileges owned by the Caribou Water, Light and Power Company and used or usable in supplying water, light and power in the town of Caribou, then this act shall become null and void.

Sec. 19. Act effective 90 days after adjournment of legislature for purposes of local referendum. This act shall take effect in 90 days after the final adjournment of the legislature, so far as necessary to empower the calling and holding of the special election authorized in section 17.

Sec. 20. Existing statutes not affected; rights conferred subject to provisions of law. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all the rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 62 of the revised statutes, and all acts amendatory thereof or additional thereto.