

MAINE STATE LEGISLATURE

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MINORITY
STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 640, L.D. 865, Bill, "An Act Regarding the Self-governance of Biddeford Pool"

Amend the bill by striking out the title and substituting the following:

'An Act to Create a Body Politic and Corporate by the Name of Biddeford Pool Village Corporation'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. Separation and incorporation; Biddeford Pool. The following territory within the City of Biddeford and the County of York is hereby created as a body politic and corporate and a political subdivision of the State by the name of Biddeford Pool Village Corporation and referred to in this Act as the "corporation":

Bounded southerly by the following described line: Beginning at an iron rod to be set flush with the ground at the intersection of the apparent northeasterly sideline of Bridge Street with the apparent northwesterly sideline of Mile Stretch Road now located in the City of Biddeford, County of York, State of Maine; said corner marker is referred to as Corner A;

Thence running from Corner A easterly across Mile Stretch Road to the point of intersection of the northeasterly sideline of Beach Avenue with the southeasterly sideline of Mile Stretch Road;

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2 Thence continuing southeasterly by and along the northeasterly
sideline of Beach Avenue to the terminus of Beach Avenue
right-of-way; and

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6 Thence continuing southeasterly by a prolongation of the last
described course of the northeasterly sideline of Beach Avenue,
to the Atlantic Ocean, extending so far as the present boundary
8 of the City of Biddeford extends or so far as state statute
dictates.

10 Bounded westerly by the following described line: Beginning at
12 Corner A as above described thence running northerly 10 feet,
more or less, to a granite monument to be set; said granite
14 monument is referred to as Corner B. The course of Line A-B is
the same course as a straight line running from the set position
16 of Corner A to the southeasterlymost corner of the concrete sea
wall situated on land now or formerly owned by Edward L.
18 Eisenstadt, said land being further described as 196 Hills Beach
Road and as Lot No. 47 on the 1994 City of Biddeford Assessors
20 Map No. 55. Corner B is set along this line. If a future survey
finds a differing position for the sideline intersection of
22 Bridge Street with Mile Stretch Road, Corner A, the granite
monument set, Corner B, and the original course A-B are held to
24 Corner C.

26 Thence continuing from Corner B northerly by a prolongation of
course A-B to the point where said prolonged course A-B
28 intersects the centerline of the channel draining "Back Bay"
so-called; said channel drains from northwest to southeast and is
30 evident at low tide; said channel centerline is defined as the
midpoint between both sides of the channel measured at low tide;
32 said point of that intersection is referred to as Corner C.

34 Thence cornering and running southeasterly from Corner C by the
average centerline course of the above-described channel to a
36 point in the centerline of said channel where the last described
southeasterly course of said channel intersects an arc measured
38 radially a distance of 600 feet northwesterly from Point D. Said
Point D is a drill hole and marker set at or near the center of
40 the southwesterlymost "icebreaker" located southerly of the "Gut"
leading to Wood Island Harbor; said "icebreaker" is further
42 described as being the 3rd of 3 large piles of granite tailings
running from the northeast to the southwest off land of the
44 Biddeford Pool Yacht Club situated southeasterly of the "Gut";
Point D is set in a flat slab of granite atop said "icebreaker"
46 near the center of said "icebreaker," the exact point to be set
by and at the discretion of a professional land surveyor
48 commissioned by the corporation. The above-described point of
intersection between Corner C and Point D is referred to as
50 Corner E.

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2 The centerline of the channel is defined and measured as the
midpoint between both sides of the channel at low tide.

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6 Thence cornering and running easterly from Corner E on a straight
line to Corner F; Corner F is a point at or near the surface
8 position of Nun Buoy No. 6, which is shown on the NOAA plan
entitled "Saco Bay and Vicinity" dated January 4, 1986; the
10 surface position of said Nun Buoy No. 6 is located by
triangulation at high tide in calm seas by and at the discretion
12 of a professional land surveyor commissioned by the corporation;
upon affixing a reasonable point to the location of said buoy,
14 said point as fixed is held as Corner F regardless of further
movement of said buoy.

16 Thence cornering and running northeasterly from Corner F
18 following the average centerline course of the "Gut" to Corner G.
Corner G is defined as a point along the average centerline of
20 the channel where the last described northeasterly course of said
centerline intersects an arc measured radially a distance of 600
22 feet northeasterly from the northerlymost corner of the granite
sea wall on land now or formerly owned by John Oddy situated
24 along the southeasterly edge of the "Gut." The average
centerline course of the "Gut" is established in the same manner
as Line C-E above-described.

26
28 Thence cornering and running northwesterly from Corner G a
distance of 2400 feet to Corner H. The course of Line G-H is
established as the course of a line running from Corner G through
30 Corner H to the fixed position of Daymarker "5B"; Daymarker "5B"
is located approximately 1850 feet northwesterly from the center
32 of Basket Island as shown on the NOAA plan entitled "Saco Bay and
Vicinity" dated January 4, 1986.

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36 Thence cornering and running northeasterly from Corner H to a
point along the present boundary line between the City of
Biddeford and the City of Saco, said point is referred to as
38 Corner I; the course of Line H-I is established as the course of
a line running from Corner H to the fixed position of Daymarker
40 "4A"; Daymarker "4A" is located northeasterly of the easterly end
of the submerged breakwater positioned along the southerly edge
42 of the outlet channel of the Saco River into the Atlantic Ocean
and is shown on the NOAA plan entitled "Saco Bay and Vicinity"
44 dated January 4, 1986.

46 The westerly boundary as described above runs from Corner A to
48 Corner B to Corner C to Corner E to Corner F to Corner G to
Corner H to Corner I.

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2 The position of certain corner points and associated lines may be
3 affected by forces of nature present and future. The position of
4 physical features associated with this description is located by
5 a professional land surveyor during the course of his or her
6 commission by the corporation. The position of said physical
7 features as they exist during the course of said commission is
8 accepted and held as the intent of this description. Upon
9 completion of the commissioned survey and the recording of said
10 survey plan at the York County Registry of Deeds, the position of
11 the Corner Points and village corporation boundaries established
12 by said survey holds regardless of future action by natural
13 forces upon said physical features.

14 Bounded northerly by the following described line: Beginning at
15 Corner I thence running easterly by and along the boundary line
16 of the City of Saco and extending so far easterly as the boundary
17 of the City of Biddeford presently extends or so far as state
18 statute dictates.

19 Bounded easterly by the following described line: Beginning at
20 the easterly end point of the above-described northerly boundary
21 line thence running southerly to the easterly end point of the
22 first described southerly boundary line, extending so far
23 easterly as the boundary of the City of Biddeford presently
24 extends or so far as state statute dictates.

25 Permanent markers are set at Corner B and Point D as described
26 above.

27 Any future retracement survey of the village corporation
28 boundaries herein described holds to the set positions of Corner
29 B and Point D.

30 Meaning and intending to include within this description all of
31 the peninsula known as Fletchers's Neck and Biddeford Pool
32 including the land along the so-called Mile Stretch, the town
33 thatch bed, Stage Island, Negro Island, Wood Island, Gooseberry
34 Island, Beach Island and all other islands within this described
35 area and surrounding waters, which territory is referred to as
36 "Biddeford Pool Village Corporation."

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38 **Sec. 2. Powers.** The corporation is authorized within its
39 jurisdictional area to build, repair, maintain, plow and provide
40 signs for roads, streets, ways and sidewalks; to build, repair
41 and maintain a system of storm and surface water drainage; to
42 provide for the removal of solid waste; to establish and maintain
43 police services; and to provide for the adoption, amendment,
44 administration and enforcement of a zoning ordinance pursuant to
45 and consistent with a valid comprehensive plan adopted by the
46 voters of the corporation, and subdivision, shoreland zoning,
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1 floodplain and other land use regulations, including the
2 establishment of a planning board, a zoning board of appeals and
3 fees to fund the costs of administration and enforcement. The
4 corporation does not have authority to enact ordinances
5 regulating traffic, parking or use of the harbor. Ordinances of
6 the City of Biddeford regarding traffic, parking and use of the
7 harbor in effect on June 1, 1997 continue to have effect within
8 the territory of the corporation. Any change in such ordinances
9 after that date have effect only if agreed to by a majority vote
10 of the board of overseers of the corporation. Except as may be
11 provided by contracts between the City of Biddeford and the
12 corporation, the City of Biddeford is relieved of the
13 responsibility to provide the services delegated to the
14 corporation by this Act; except that the City of Biddeford shall
15 continue to provide to the corporation and its inhabitants all
16 other services that it has provided in the past or that may be
17 required by law. The City of Biddeford is relieved of liability
18 for defects in roads, streets, ways or sidewalks within the
19 territorial limits of the corporation and for failure to perform
20 the duties assumed by the corporation. The corporation assumes
21 such duty and liability as would be assumed by the City of
22 Biddeford except for this Act, which liability may be enforced
23 under the same conditions, in the same manner and with the same
24 remedies as are provided by law in relation to municipalities.
25 Except as provided in this Act, the corporation has all of the
26 powers and duties of a village corporation under the general laws
27 of the State. Notwithstanding any general law to the contrary,
28 when any land use ordinance, bylaw or regulation of the
29 corporation conflicts with an ordinance of the City of Biddeford,
30 the ordinance, bylaw or regulation of the corporation prevails.

32 **Sec. 3. Property.** The corporation may, by purchase, gift or
33 otherwise, acquire real or personal property and manage, operate,
34 sell, lease, mortgage or exchange that property for the benefit
35 of the corporation. This section does not grant the corporation
36 the power of eminent domain.

38 **Sec. 4. City to pay portion of taxes to corporation.** Within 30 days
39 after each due date established by the City of Biddeford for the
40 payment of real and personal property taxes, the City of
41 Biddeford shall designate and transfer to the treasurer of the
42 corporation the greater of 31% of revenue from of all real estate
43 and personal property taxes collected by the city from real and
44 personal property located within the boundaries of the
45 corporation during that payment period, exclusive of any county
46 taxes and the revenue due the corporation for the first full
47 payment period after the corporation is organized, adjusted by
48 any increase in the Consumer Price Index from the first July 1st
49 after which the corporation is organized to the July 1st
50 immediately preceding the payment date. In

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2 addition, with the first transfer of revenue to the corporation
 3 following acceptance of the charter, the City of Biddeford shall
 4 pay a supplemental amount equal to 2% of revenue from all real
 5 estate and personal property taxes collected from real and
 6 personal property located within the boundaries of the
 7 corporation in the full fiscal year immediately preceding the
 8 payment, for the purposes of allowing the corporation to
 9 establish a reserve fund for emergencies and unanticipated
 10 expenses. The board of overseers of the corporation may request
 11 additional funds from the city council of the City of Biddeford
 12 to fund emergency expenditures or other additional needs. If the
 13 City of Biddeford does not provide additional funding, the board
 14 of overseers may request an amendment to this charter by the
 15 Legislature. With each transfer of tax revenue to the
 16 corporation, the treasurer of the City of Biddeford shall furnish
 17 to the corporation the records of account of the city itemizing
 18 all tax payments made to the city on account of real or personal
 19 property located within the corporation. All revenue transferred
 20 by the City of Biddeford to the corporation pursuant to this
 21 section must be expended by the corporation for its governmental
 22 purposes. If the City of Biddeford fails to make transfers to the
 23 corporation by the due date set forth in this section, the city
 24 is liable for a penalty, payable to the corporation, equaling 1%
 25 of the unpaid transfer due for each week or portion of a week
 26 that transfer is not made. Reasonable administrative expenses
 27 incurred by the City of Biddeford in complying with this section
 28 must be paid by the corporation within 10 business days following
 receipt of a transfer from the City of Biddeford.

30 **Sec. 5. Fiscal year.** The fiscal year of the corporation is the
 31 same as the fiscal year of the City of Biddeford.

32 **Sec. 6. Power to borrow money.** The corporation is further
 33 authorized and vested with the power, upon approval by the
 34 voters, to borrow money and issue bonds, notes or other evidences
 35 of indebtedness in such amounts as the voters may approve for any
 36 of the purposes of the corporation, in the same manner as is
 37 provided by law for the borrowing of money and the issuance of
 38 bonds, notes or other evidences of indebtedness by municipalities
 39 and subject to the same limitations as are provided for the
 40 indebtedness of municipalities. The City of Biddeford is not
 41 responsible for debts of the corporation incurred pursuant to
 42 this section.

44 **Sec. 7. Officers; adoption of ordinances and bylaws.** The officers
 45 of the corporation are a village administrator, who is employed
 46 by the board of overseers and who is clerk and treasurer of the
 47 corporation, a board of overseers and such other officers, boards
 48 or committees as the bylaws of the corporation may require. The
 49 board of overseers consists of 3 or 5 members all
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of whom must be legal voters of the corporation and must be chosen by ballot. The corporation may determine at a meeting held at least 90 days before the annual meeting whether 3 or 5 overseers will be elected and their term of office. If the corporation fails to fix the number, 3 overseers must be elected. If the corporation fails to fix the term, it is for one year. The corporation is empowered to adopt, at any legal meeting called for that purpose, ordinances or bylaws for the administration of its government and for the proper management of its affairs and other related purposes, provided those ordinances or bylaws are not repugnant to the laws of the State. Any ordinances or bylaws may be altered or amended at any legal meeting of the corporation in the call for which notice of the proposed change is given. The overseers of the corporation shall give prior written notice to the municipal officers of the City of Biddeford of all proposed ordinances or amendments to the ordinances. The officers of the corporation must be sworn before the clerk of the corporation or a dedimus justice and the treasurer of the corporation shall give bond to the corporation in such sums as the overseers may direct, which bond must be approved by the overseers.

Sec. 8. Parks. The overseers of the corporation, pursuant to the Maine Revised Statutes, Title 30-A, section 6304, shall oversee and maintain a certain park located within the corporation's boundaries known as "Vines' Landing." Vines' Landing must at all times be a public park and available to all citizens of the City of Biddeford.

Sec. 9. Major natural disaster. If a natural disaster, including, but not limited to, flood, fire, hurricane, earthquake or other force majeure, causes significant damage to the essential infrastructure of the corporation, the City of Biddeford is obligated to apply for disaster relief funding from the State and Federal Government on behalf of the corporation and to provide other assistance, provided the assistance does not necessitate unreimbursed additional expenditures by the city.

Sec. 10. Qualification of voters. All persons residing within the limits of the corporation who are legal voters in the City of Biddeford may be voters at any meeting of the corporation. The clerk of the corporation shall determine the legal voters at any meeting and shall prepare a list of legal voters prior to each meeting that may be corrected at any time before the meeting or during its progress.

Sec. 11. First election of officers. The first election of officers must be held at the meeting at which this Act is accepted.

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2 **Sec. 12. Acceptance of charter; calling of meetings.** This Act may
 4 be accepted as the charter of the corporation at any time within
 6 2 years from its approval by the Governor but only one meeting to
 8 vote on this Act may be called in any one calendar year. Peter
 10 McPheeters, Norman Goldthwait, Nancy Guignard, Peggy Ayers and
 12 Wallace Nutting, or any 3 of them, shall call all meetings of the
 14 corporation prior to the acceptance of this Act and the election
 16 of officers, and notify the legal voters of the corporation to
 meet at some suitable time and place by posting notices in 2
 public places at least 7 days before the time of holding the
 meeting. All meetings held after the acceptance of this Act and
 the election of the officers must be called and notices must be
 posted by the overseers in the same manner as town meetings are
 called and notices posted by municipal officers. At all meetings
 of the corporation, a moderator must be chosen in the same manner
 and with the same power as a moderator in town meetings.

18 **Sec. 13. Effective date.** This Act takes effect when approved by
 20 the Governor so far as to authorize the calling of a meeting or
 22 meetings of the corporation for the purpose of voting upon the
 24 acceptance of this Act. If this Act is accepted as the charter of
 26 the corporation by a majority of the voters of the corporation at
 a legal meeting called for that purpose, it takes effect 30 days
 after the vote. The board of overseers shall notify the City of
 Biddeford of the acceptance of this Act. Within 30 days of being
 notified, the City of Biddeford shall transfer to the corporation
 a prorated portion of revenues due the corporation under section
 4 plus the supplemental 2% of revenues provided for the first
 year after incorporation in order to build a reserve fund.

30 **Sec. 14. Report.** No later than 3 years after the date of
 32 acceptance of this Act, the board of overseers of the corporation
 34 shall submit a written report to the Executive Director of the
 Legislative Council and to the joint standing committee of the
 36 Legislature having jurisdiction over local government matters.
 38 The report must include information regarding expenditures by the
 corporation since its incorporation, experience with and any
 40 problems encountered with the City of Biddeford regarding
 operation of the corporation or any other matter affecting the
 territory of Biddeford Pool and any other information the board
 wishes to convey to the Legislature.'

42 Further amend the bill by inserting at the end before the
 44 summary the following:

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COMMITTEE AMENDMENT

FISCAL NOTE

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This bill has no fiscal impact on state revenue or expenditures. This bill does impose several new requirements on the City of Biddeford should the residents of Biddeford Pool choose to form the Biddeford Pool Village Corporation. However, the State will not be required to fund 90% of the costs associated with these requirements because the costs incurred by the city will be reimbursed by the corporation. The State is not required to reimburse the corporation because it is that local unit's decision to incur those costs.'

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SUMMARY

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This amendment replaces the bill. Rather than authorizing Biddeford Pool to secede from the City of Biddeford, it authorizes the residents of Biddeford Pool to form a village corporation. The village corporation would take over responsibility for roads, sidewalks, water drainage, removal of solid waste, police services and regulation of land use, including subdivision and zoning regulations. Current City of Biddeford ordinances regarding traffic, parking or use of the harbor continue to apply in the village corporation territory, but any changes to those ordinances apply only if agreed to by the overseers. The city transfers 31% of revenue from property taxes collected within the village corporation territory. In addition, in the first transfer after incorporation, the city must provide a supplemental 2% transfer to enable the corporation to build a reserve fund for emergencies and unanticipated expenses. The city is subject to a 1% penalty for each week or portion of a week transfer is not made as required.

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The corporation is managed by a village administrator, a board of overseers comprised of 3 or 5 elected persons and other officers or committees called for by the corporate bylaws. The corporation oversees the park known as 'Vines' Landing, which remains available to all Biddeford citizens.

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All persons who reside in the limits of the corporation and who are legal voters in the City of Biddeford may vote at meetings of the corporation.

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The amendment provides for approval of the charter at any time within 2 years of its approval by the Governor. Any 3 of the 5 named persons may call the first meeting to vote on the charter and, if accepted, to elect officers. If the charter is accepted, it becomes effective 30 days after the vote.

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The amendment also adds a fiscal note to the bill.