

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 865

H.P. 640

House of Representatives, February 6, 1997

An Act Regarding the Self-governance of Biddeford Pool.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JOYCE of Biddeford.
Cosponsored by Senator AMERO of Cumberland and
Representatives: BUCK of Yarmouth, JOYNER of Hollis, KASPRZAK of Newport, LANE
of Enfield, PERKINS of Penobscot, SAVAGE of Union, WINSOR of Norway, Senator:
KILKELLY of Lincoln.

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

PART A

Sec. A-1. Separation and incorporation; Biddeford Pool. Subject to a referendum election as set forth in section 2 of this Part, the following territory now within the City of Biddeford and York County is hereby separated and set off from the City of Biddeford and incorporated into a separate town by the name of the Town of Biddeford Pool:

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;

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

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 of the City of Biddeford extends or so far as state statute dictates.

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

Thence continuing from Corner B northerly by a prolongation of course A-B to the point where said prolonged course A-B

2 intersects the centerline of the channel draining "Back Bay"
so-called; said channel drains from northwest to southeast and is
4 evident at low tide; said channel centerline is defined as the
midpoint between both sides of the channel measured at low tide;
said point of that intersection is referred to as Corner C.

6
8 Thence cornering and running southeasterly from Corner C by the
average centerline course of the above-described channel to a
10 point in the centerline of said channel where the last described
southeasterly course of said channel intersects an arc measured
12 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
14 the southwesterlymost "icebreaker" located southerly of the "Gut"
leading to Wood Island Harbor; said "icebreaker" is further
16 described as being the 3rd of 3 large piles of granite tailings
running from the northeast to the southwest off land of the
Biddeford Pool Yacht Club situated southeasterly of the "Gut";
18 Point D is set in a flat slab of granite atop said "icebreaker"
near the center of said "icebreaker," the exact point to be set
20 by and at the discretion of a professional land surveyor
commissioned by the Town of Biddeford Pool. The above-described
22 point of intersection between Corner C and Point D is referred to
as Corner E.

24
26 The centerline of the channel is defined and measured as the
midpoint between both sides of the channel at low tide. The
average centerline course is determined by a professional land
28 surveyor commissioned by the Town of Biddeford Pool as follows:
Any deviation in the measured centerline of the channel in excess
30 of 10 feet from a calculated average course requires a deflection
in the boundary line. A calculated course that does not deviate
32 more than 10 feet from the measured centerline is considered
average.

34
36 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
38 position of Nun Buoy No. 6, which is shown on the NOAA plan
entitled "Saco Bay and Vicinity" dated January 4, 1986; the
40 surface position of said Nun Buoy No. 6 is located by
triangulation at high tide in calm seas by and at the discretion
42 of a professional land surveyor commissioned by the Town of
Biddeford Pool; upon affixing a reasonable point to the location
of said buoy, said point as fixed is held as Corner F regardless
44 of further movement of said buoy.

46 Thence cornering and running northeasterly from Corner F
48 following the average centerline course of the "Gut" to Corner G.
Corner G is defined as a point along the average centerline of
the channel where the last described northeasterly course of said
50 centerline intersects an arc measured radially a distance of 600

2 feet northeasterly from the northerlymost corner of the granite
sea wall on land now or formerly owned by John Oddy situated
4 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.

6
8 Thence cornering and running northwesterly from Corner G a
distance of 2400 feet to Corner H. The course of Line G-H is
10 established as the course of a line running from Corner G through
Corner H to the fixed position of Daymarker "5B"; Daymarker "5B"
12 is located approximately 1850 feet northwesterly from the center
of Basket Island as shown on the NOAA plan entitled "Saco Bay and
Vicinity" dated January 4, 1986.

14
16 Thence cornering and running northeasterly from Corner H to a
point along the present boundary line between the City of
18 Biddeford and the City of Saco, said point is referred to as
Corner I; the course of Line H-I is established as the course of
20 a line running from Corner H to the fixed position of Daymarker
"4A"; Daymarker "4A" is located northeasterly of the easterly end
22 of the submerged breakwater positioned along the southerly edge
of the outlet channel of the Saco River into the Atlantic Ocean
and is shown on the NOAA plan entitled "Saco Bay and Vicinity"
24 dated January 4, 1986.

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

30 The position of certain corner points and associated lines may be
affected by forces of nature present and future. The position of
32 physical features associated with this description is located by
a professional land surveyor during the course of his or her
34 commission by the Town of Biddeford Pool. The position of said
physical features as they exist during the course of said
36 commission is accepted and held as the intent of this
description. Upon completion of the commissioned survey and the
38 recording of said survey plan at the York County Registry of
Deeds, the position of the Corner Points and Town Boundaries
40 established by said survey holds regardless of future action by
natural forces upon said physical features.

42
44 Bounded northerly by the following described line: Beginning at
Corner I thence running easterly by and along the boundary line
46 of the City of Saco and extending so far easterly as the boundary
of the City of Biddeford presently extends or so far as state
statute dictates.

48
50 Bounded easterly by the following described line: Beginning at
the easterly end point of the above-described northerly boundary

2 line thence running southerly to the easterly end point of the
first described southerly boundary line, extending so far
4 easterly as the boundary of the City of Biddeford presently
extends or so far as state statute dictates.

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

8 Any future retracement survey of the town boundaries herein
10 described holds to the set positions of Corner B and Point D.

12 Meaning and intending to include within this description all of
the peninsula known as Fletchers's Neck and Biddeford Pool
14 including the land along the so-called Mile Stretch, the town
thatch bed, Stage Island, Negro Island, Wood Island, Gooseberry
16 Island, Beach Island and all other islands within this described
area and surrounding waters, which territory is referred to as
18 "Biddeford Pool." Notwithstanding this separation, the Town of
Biddeford Pool remains within York County.

20 **Sec. A-2. Referendum election.** Part A of this Act takes
22 effect 90 days after approval for the purpose of permitting its
submission to the voters of Biddeford Pool at a special
24 referendum election to be held at a suitable location in
Biddeford Pool on Tuesday, March 4, 1998 on the question of the
26 separation of that territory from the City of Biddeford.
Warrants must be issued for this election notifying the qualified
28 voters to vote on the approval or rejection of this Part.

30 For the purposes of this referendum election, all persons
legally registered or eligible to register to vote within
32 Biddeford Pool are eligible to vote.

34 The city clerk of the City of Biddeford shall prepare the
required warrant and ballots on which the subject matter of this
36 Part must be reduced to the following question:

38 "Do you favor the separation of Biddeford Pool, Stage
Island, Wood Island, Beach Island, Negro Island, Gooseberry
40 Island and other adjacent islands and the surrounding waters
from the City of Biddeford and incorporation as a separate
42 town?"

44 The voters shall indicate by a cross or check mark placed
against the word "Yes" or "No" their opinion of the same.

46 The referendum election must be conducted by the city clerk
48 of the City of Biddeford who shall declare the result of the
election. The city clerk's declaration of the election results
50 is final, subject to review by the Superior Court for the County

2 of York. The results of the referendum election must be filed by
the clerk with the Secretary of State.

4 **Sec. A-3. Effective date of separation; form of government.** If a
majority of those voting in the Biddeford Pool referendum
6 election approve the question, Part A of this Act takes effect
with respect to that territory and that territory is separated
8 from the City of Biddeford and is incorporated as the Town of
Biddeford Pool as of July 1, 1998 and shall adopt the town
10 meeting as its form of government. Nothing in this Act prevents
the Town of Biddeford Pool from subsequently voting to change its
12 form of government without the necessity of further action by the
Legislature.

14 **Sec. A-4. Allocation of debts and assets.** If the Town of
Biddeford Pool is incorporated and is separated from the City of
16 Biddeford on July 1, 1998, the Town of Biddeford Pool shall
assume its just and due proportion of the debts of the City of
18 Biddeford and receive its just and due proportion of the assets
of the City of Biddeford determined as follows.

22 **1. City of Biddeford debts.** The debts of the City of
Biddeford are limited to the general bonded indebtedness of the
24 city issued and outstanding, comprising general obligation bonds,
notes and capital leases, as reported in accordance with
26 generally accepted accounting principles in the city's audited
general purpose financial statements as of June 30, 1997.

28 **2. Real property and tangible personal property of the City
of Biddeford at Biddeford.** All real property owned by the City
30 of Biddeford on June 30, 1998 that is located within Biddeford
Pool and all tangible personal property customarily located
32 within Biddeford Pool becomes the property of the Town of
Biddeford Pool as a matter of law without further action or
34 documentation, but the City of Biddeford shall promptly deliver
to the Town of Biddeford Pool appropriate confirmatory quitclaim
36 deeds for all such real property and appropriate confirmatory
quitclaim bills of sale for all such tangible personal property.
38 The residents of the City of Biddeford retain the right to use
the public beach and beach parking area at Biddeford Pool upon
40 the same terms, conditions and fees as the residents of the Town
of Biddeford Pool.

44 **3. Other assets of the City of Biddeford.** All other city
assets are the amount of the unreserved fund balance of the
46 general fund of the City of Biddeford as reported in accordance
with generally accepted accounting principles in the city's
48 audited general purpose financial statements as of June 30, 1997.

2 **4. Just and due proportion of debts and assets.** The just
and due proportion of the debts and other assets of the City of
4 Biddeford determined in subsections 1 and 3 are allocated to the
Town of Biddeford Pool based on the ratio of the state valuation
6 as of April 1, 1998 of taxable properties within the Town of
Biddeford Pool to the state valuation as of April 1, 1998 of
8 taxable properties of the City of Biddeford including the Town of
Biddeford Pool referred to in this section as the "allocation
ratio."

10
12 **5. Method and terms of payment.** Upon incorporation, the
City of Biddeford shall provide the Town of Biddeford Pool with a
14 schedule of debt service payment requirements for the debts of
the City of Biddeford determined in subsection 1. Unless
16 alternative terms for payment are agreed upon by the parties in
writing, the Town of Biddeford Pool shall pay to the City of
18 Biddeford the debt service payment requirements multiplied by the
allocation ratio no later than 10 working days prior to the due
20 date for such a payment. Unless otherwise agreed, the City of
Biddeford shall pay to the Town of Biddeford Pool the just and
22 due proportion of other assets as determined in subsection 4
within 10 working days from the date of incorporation of the Town
of Biddeford Pool.

24 **Sec. A-5. Intermunicipal agreements.** To the extent that the
26 City of Biddeford or the Town of Biddeford Pool enters into
mutual aid compacts, agreements with respect to the education of
28 students or the use of the public schools, and other
intermunicipal agreements with other cities and towns, each shall
30 offer to the other the opportunity to enter into the same
compacts and agreements on the same terms as the other cities and
32 towns.

34 **Sec. A-6. Property taxes.** Until the effective date of
separation, Biddeford Pool remains a part of the City of
36 Biddeford for all purposes and the City of Biddeford shall
maintain its level of customary municipal services to Biddeford
38 Pool. Unabated property taxes levied but uncollected for fiscal
years beginning prior to the effective date of separation are
40 transferred as a matter of law to the Town of Biddeford Pool and
are not an asset of the City of Biddeford for purposes of this
42 Act.

44
46
PART B

48 **Sec. B-1. Other duties and responsibilities.** In anticipation of
the approval of the voters of the referendum election established
in Part A, section 2, the City of Biddeford and representatives
50 of the territory constituting the future Town of Biddeford Pool

2 shall meet to negotiate in good faith the issues arising from the
creation of the Town of Biddeford Pool, including the allocation
4 of debts and assets as required in Part A, section 4, the terms
of any intermunicipal agreements including those for schools,
6 police and firefighting services and any other matters required
to be determined prior to the establishment of the Town of
Biddeford Pool.

8
Sec. B-2. Agreement binding; binding arbitration. Negotiations
10 under section 1 of this Part must be completed by December 1,
1997. If the parties reach agreement by that date, the agreement
12 must be reduced to writing and is final and binding on the City
of Biddeford and the Town of Biddeford Pool upon incorporation of
14 the Town of Biddeford Pool as of July 1, 1998 if the referendum
question in Part A, section 2 is approved.

16
If the parties do not reach agreement by December 1, 1997,
18 the parties shall submit any matters remaining in dispute to a
panel of arbitrators and shall reduce to writing all agreed-upon
20 matters. The panel of arbitrators consists of one arbitrator
selected by the City of Biddeford, one arbitrator selected by the
22 representatives of Biddeford Pool and one neutral arbitrator
selected jointly by the 2 other arbitrators. Determination of
24 disputed matters by the panel of arbitrators must be rendered on
or before February 1, 1998 and is final and binding on the
26 parties. The arbitration must be administered under the auspices
of the American Arbitration Association and, except for the
28 selection of arbitrators, is governed by the rules and procedures
of the American Arbitration Association. The arbitrators may
30 award costs of arbitration in whole or in part, including
reasonable attorney's fees, to either side if in the sole
32 discretion of the arbitrators the other side has been
unreasonable. Each party is responsible for its own costs of
34 arbitration. This provision may be specifically enforced by a
Justice of the Superior Court.

36
Sec. B-3. Transition. If a majority of those voting in the
38 Biddeford Pool referendum election approve the question, there
will be a transition period from the date on which the city clerk
40 announces the results of the referendum until July 1, 1998.
During the transition period, the following special procedures
42 and powers are in effect.

44 **1. Meeting to select municipal officers.** A justice of the
peace or notary public may issue a warrant to any legal voter in
46 the territory comprising the future Town of Biddeford Pool
directing that legal voter to notify the municipal inhabitants of
48 the said territory of a public meeting to select municipal
officers of the Town of Biddeford Pool and to transact municipal
50 business on July 1, 1998, the meeting to be held at a time and

2 place specified in the warrant. Notice to the municipal
inhabitants must be provided at least 30 days prior to the
meeting, which must be held no later than April 15, 1998.

4
6 **2. Municipal officer powers.** The municipal officers
elected by the inhabitants at the meeting held pursuant to
subsection 1, together with the inhabitants acting in town
meeting where required and appropriate, have all the powers,
8 except the power to raise money, necessary to establish the Town
of Biddeford Pool on July 1, 1998, including the power to adopt a
10 budget, to enact ordinances for the administration of the Town of
Biddeford Pool and for the regulation of matters within its
12 jurisdiction, to enter into contracts effective July 1, 1998 for
the use of real estate for the business of the Town of Biddeford
14 Pool, for the purchase of goods and services, for the hiring of
necessary personnel and for other lawful purposes necessary in
16 the judgment of the municipal officers of the Town of Biddeford
Pool. Notwithstanding the foregoing, the said municipal officers
18 have the power during the transition period to borrow money and
to accept voluntary advance payments of future taxes in order to
20 pay for the costs of immediately necessary expenses as determined
by the municipal officers but only for those expenses necessary
22 to prepare for the administration of the Town of Biddeford Pool
on July 1, 1998.
24

26 **3. Status of contracts.** Although the municipal officers
have no power to raise money before July 1, 1998, any contracts
28 entered into by the municipal officers prior to that date
pursuant to this Part are otherwise binding and enforceable on
30 the Town of Biddeford Pool.

32 **4. Cooperation by City of Biddeford.** The City of Biddeford
shall cooperate during the transition period to provide records
34 and information as may be required by the officers of the Town of
Biddeford Pool to establish the effective administration of the
36 Town of Biddeford Pool and the authorized municipal officials of
the City of Biddeford shall commence the negotiations set forth
38 in this Part no later than the effective date of this Part.

40 SUMMARY

42
44 Part A of this bill authorizes the incorporation of the Town
of Biddeford Pool if the legal residents of Biddeford Pool
approve, by referendum, separation from the City of Biddeford and
46 incorporation as a separate town.

48 Part B of this bill requires the parties to negotiate
matters of duties and responsibilities in advance of a vote
50 approving the question presented at the referendum election. If

2 the parties fail to agree in a timely fashion, the matters are subject to binding arbitration.