

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 2173

H. P. 2164

House of Representatives, March 1, 1978

Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 25. Committed to the Joint Standing Committee on Public Utilities. Ordered printed. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owls Head.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

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**AN ACT to Incorporate the Vinalhaven Water District.**

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

Whereas, uninterrupted collection and distribution of water is essential to the health and welfare of the inhabitants of the Town of Vinalhaven; and

Whereas, imminent interruption of that collection and distribution of water is likely if a water district is not created immediately; and

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

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

**Sec. 1. Territorial limits; corporate name and purpose.** The territory

comprising the Town of Vinalhaven and the inhabitants thereof are hereby created a body politic and corporate under the name of the "Vinalhaven Water District" for the purpose of supplying the district and the inhabitants thereof and others with pure water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes.

**Sec. 2. Powers; authority to locate, construct and maintain.** The district, for the purposes of its incorporation, is hereby authorized within its territory to take, collect, hold, divert, use and distribute to that district, or any part thereof, water from any lake, pond, stream, brook, spring, well or other source, natural or artificial; to locate pipes, mains, conduits, aqueducts, and fixtures, and to take up, replace, repair and maintain the same, in, along and through any public or private ways, public grounds or lands of any person or corporation as hereinafter provided; to erect, construct and maintain dams, reservoirs, aqueducts, pipes, standpipes, mains, wells, conduits, hydrants, pumping stations, treatment facilities and all other structures, equipment, fixtures and appurtenances necessary and convenient for those purposes; and, generally, to do any and all things and perform any and all acts necessary or incidental to accomplish the purpose of this Act.

Whenever the district shall enter, dig up or excavate any public way or other land in order to locate, take up, replace, repair or maintain any pipes, mains, conduits, aqueducts and fixtures, or for any other purpose, it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall, at the completion thereof, without unnecessary delay, restore or replace the way or land to its prior or other proper condition.

**Sec. 3. Powers; authority of district and town to make contracts.** The district, through its trustees, is hereby authorized to contract with persons and corporations, including the Town of Vinalhaven, and the Town of Vinalhaven is authorized to contract with it for the supply of water for municipal purposes.

**Sec. 4. Powers; authority to acquire and hold property; eminent domain.** The district, for the purposes of its incorporation, is hereby authorized and empowered to acquire and hold as for public uses real estate and personal estate necessary and convenient for the aforesaid purposes, and is expressly granted the right of eminent domain. The district is hereby authorized to take, use and hold by purchase, lease or otherwise, or by the exercise of eminent domain as hereinafter provided, any land or interest therein or water rights necessary for erecting and maintaining dams, plants and works for flowage, for pumping, for supplying water through its mains, for reservoirs, for preserving the purity of the water and watershed, for laying and maintaining mains, aqueducts and other structures for taking, distributing, discharging and disposing of water, for forming basins and reservoirs, for erection of buildings for pumping works for use

therein, for laying pipes and maintaining same, and for laying and maintaining conduits for carrying, collecting and discharging water, for filtering, rectifying and treating plants, works and facilities, for such other objects necessary, convenient and proper for the purposes of its incorporation and for rights-of-way or roadways to its sources of supply, dams, reservoirs, mains, aqueducts, structures, plants, works, facilities and lands.

Nothing herein contained shall be construed as authorizing the 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, therein, or by subsequent Act of the Legislature.

**Sec. 5. Procedure as to the exercise of right of eminent domain.** In exercising any rights of eminent domain that are herein conferred upon the district, the district shall file, for record in the registry of deeds in Knox County, plans of the location of lands or interest therein to be taken, with an appropriate description and the names of the owners thereof, if known. When, for any reason, the district fails to acquire property which it is authorized to take and which is described in that location, or, if the location as recorded is defective or uncertain, it may, at any time, correct and perfect that location and file a new description thereof and, in that case, the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any act which would have been justified if the original taking had been lawful. No entry shall be made on any private lands except to make surveys until the expiration of 10 days from that filing, whereupon possession may be had of all those lands or interest therein so taken, but title thereto shall not vest in the district until payment therefor.

If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of the district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Knox County, may have those damages assessed by them. The procedure and all subsequent proceedings and the rights of appeal therefrom 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. 6. Procedure if public utility must be crossed.** In case of any crossing of any public utility, unless consent is given by the company owning or operating that public utility as to place, manner and conditions of the crossing within 30 days after the consent is requested by the district, the Public Utilities Commission, upon petition by the district, shall determine the place, manner and conditions of that crossing; and all work on the property of that public utility shall be done under the supervision and to the satisfaction of that public utility or as prescribed

by the Public Utilities Commission, but at the expense of the district.

**Sec. 7. Board of Trustees.** All the affairs of the district shall be managed by a board of 3 trustees, resident of the municipality, who shall be appointed by the municipal officers of the Town of Vinalhaven. They shall hold office as hereinafter provided and until their respective successors are appointed and qualified. All trustees shall be eligible for reappointment. Whenever the term of office of a trustee expires, the municipal officers of the Town of Vinalhaven shall either reappoint the trustee or appoint a successor to serve the full term of 3 years, and in case of any other vacancy arising from any cause, it shall be filled in like manner for the unexpired term. When any trustee ceases to be a resident of the municipality, his office as trustee shall be declared vacant. During his term of office no selectman of the town of Vinalhaven shall serve as a trustee.

**Sec. 8. Trustees, how appointed; meetings; officers.** As soon as practicable after the acceptance of this Act as hereinafter provided, the municipal officers of the town of Vinalhaven shall appoint the board of trustees of the district, one to serve until the first annual meeting of the district, one to serve until the 2nd annual meeting of the district, and one to serve until the 3rd annual meeting of the district. At each annual meeting of the district, commencing with the first, as their terms expire, a trustee shall be appointed to serve for a term of 3 years. As soon as convenient after their appointment, the trustees first appointed shall hold a meeting at some convenient place in the district, to be called by any member thereof in writing, designating the time and place and delivered in hand to the other two members not less than 2 full days before the meeting; provided that they may meet by agreement without that notice. The trustees shall then organize, by electing from their own number, a chairman and a clerk and, not necessarily from their own number, a treasurer. They shall adopt a corporate seal and bylaws and perform any other acts within the powers delegated to them by law. Following the appointment of the new trustees at each annual meeting of the district, the trustees shall elect from their own number a chairman and a clerk and, not necessarily from their own number, a treasurer, to serve until the next annual meeting of the district and until their respective successors are elected and qualified.

The trustees from time to time may choose and employ and fix the compensation of any other necessary officers and agents, who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with such sureties as the trustees shall approve, the cost thereof to be paid by the district. Members of the board of trustees shall be eligible to any office under the board. The trustees, as such, shall receive as compensation for their services an amount to be determined by the municipal officers.

The trustees shall be sworn to the faithful performance of their duties as such,

which shall include the duties of any member who shall serve as clerk or clerk pro tempore. They shall make and publish an annual report, including a report of the treasurer, and such other reports as required by law.

**Sec. 9. Annual meeting of district.** After the acceptance of this Act and the organization of the board of trustees as hereinbefore provided, the annual meeting of the district shall be held within the district on the first Monday of each April, at such hour and place as may be designated by resolution of the board of trustees as provided in the bylaws. Notice thereof, signed by the chairman or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting.

**Sec. 10. Powers; authority to acquire certain property of Vinalhaven Water Company.** The district, through its trustees, is hereby authorized to acquire by purchase all or part of the entire plant, properties, franchises, rights and privileges owned by Vinalhaven Water Company, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tool and all apparatus and appliances used or usable in supplying water in the district; and the company is hereby authorized to sell, transfer and convey their plants, properties, franchises, rights and privileges to the district.

**Sec. 11. Procedure in case trustees and Vinalhaven Water Company fail to agree on terms of purchase.** In case the trustees fail to agree with the Vinalhaven Water Company upon terms of purchase, then the district through its trustees aforesaid, is hereby authorized to take the properties, interest and franchises of the Vinalhaven Water Company as set forth in section 10, in the manner hereinafter provided wherein the Vinalhaven Water Company and its mortgagees, if any, or those having an interest in any realty which is of record, shall be the parties defendant. The district, through its trustees, is hereby authorized to file a petition in the clerk's office of the Superior Court for the County of Knox, addressed to any justice thereof who, after notice to the defendant aforesaid, shall, after hearing and within 60 days after the filing of the petition, appoint 3 disinterested appraisers for the purpose of fixing the valuations of the plant, property and franchises of the Vinalhaven Water Company described in section 10. The court may order under proper terms the production for inspection by the trustees or the appraisers of all books and papers pertaining to the issue on petition for same by the petitioner, unless same are voluntarily produced. The appraisers shall have the power to administer oaths. The appraisers so appointed shall, after due notice and hearing, fix the valuation as of the date of filing the petition of the plants, properties and franchises at what they were fairly and equitably worth so that the company shall receive just compensation for same. The report of the appraisers or of a majority of them together with the report of a stenographer certified by the appraisers as correct,

shall be filed in the clerk's office within 6 months after their appointment and any Justice of the Superior Court may after notice and hearing confirm or reject the same or recommit it if justice so requires. Upon the confirmation of the report, the court so sitting shall thereupon make final decree upon the entire matter, including the application of the purchase money and transfer of the property, jurisdiction over which is hereby conferred, and with the power to enforce the decree as in equity cases. All findings of fact by the court and the appraisers shall be final, but any party aggrieved may take exceptions as to any matters of law, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. These exceptions shall be claimed on the docket within 10 days after the final decree is signed, entered and filed and notice thereof has been given by the clerk to the parties and the exceptions so claimed shall be made up, allowed and filed within that 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 of these exceptions and there heard, unless otherwise agreed, or the law court for good cause shall order further time for hearing thereon. On payment of tender by the district of the amount determined by the final decree and the performance of all other terms and conditions imposed by the court, the plant, properties and franchises of Vinalhaven Water Company, as described in section 10, shall become vested in this district.

**Sec. 12. Powers; authority to borrow money; to issue bonds and notes.** For accomplishing the purposes of this Act, and for such other expenses as may be necessary for the carrying out of those purposes, the district, through its trustees, is authorized to borrow money temporarily and to issue therefor its negotiable notes; and for the purpose of renewing and refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this Act, including organizational and other necessary expenses and liabilities, whether incurred by the district or the municipality, the district being authorized to reimburse the municipality for any such expense incurred by it, and in acquiring properties, paying damages, laying pipes, mains, aqueducts, conduits, constructing, maintaining and operating a water plant or system and making renewals, additions, extensions and improvements to the same, and to cover interest payments during the period of construction, the district, through its trustees, is also authorized to issue, from time to time, bonds, notes or other evidences of indebtedness of the district in one series, or in separate series, in such amount or amounts bearing interest at such rate or rates, and having such terms and provisions as the trustees shall determine.

The bonds, notes and evidences of indebtedness may be issued to mature serially or made to run for such periods as the trustees may determine, but none of them shall run for a period longer than 40 years from the date of original issue

thereof. Bonds, notes or evidences of indebtedness may be issued with or without provision for calling the same prior to maturity, and if callable, may be made callable at par or at such premium as the trustees may determine. All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Vinalhaven Water District," shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district, and if coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile signature of the treasurer.

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

**Sec. 13. Property tax exempt.** The real and personal property, rights and franchises of the district shall be forever exempt from taxation.

**Sec. 14. Water rates; application of revenue; sinking fund.** All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of the district the rates established by the board of trustees for the water used by them. These rates shall be uniform within the territory supplied by the district and shall, if required by law, be subject to the approval of the Public Utilities Commission. These rates shall be so established as to provide revenue for the following purposes:

1. Current expenses; extensions; renewals. To pay current expenses for operating and maintaining the water system and to provide for such extensions and renewals as may become necessary;

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

3. Sinking fund. To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created by the district other than serial bonds and notes, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of the indebtedness, or if serial bonds or notes are issued, to pay the principal of those bonds and notes payable in that year. 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 or fiduciaries or trustees in this State are now or hereafter allowed to hold; and



4. Surplus. If any surplus remains at the end of the year, it may be turned into the sinking fund or used for such other purposes of the district as the trustees may determine.

**Sec. 15. 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, except those referred to in section 11, shall be exercised and performed in accordance with all the applicable provisions of the Revised Statutes, Title 35, and all acts amendatory thereof or additional thereto.

**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 Vinalhaven Water District.

**Sec. 17. Effective date; referendum; certificate to Secretary of State.** In view of the emergency cited in the preamble, this Act shall be submitted to the legal voters of the district at a special election or elections called and held for the purpose. This election shall be called by the municipal officers of the Town of Vinalhaven and shall be held at the regular voting places; the date of the election shall be determined by the municipal officers, but in no event shall the election be later than the first day of November, 1978. The special election shall be called, advertised and conducted according to the law relating to municipal elections; provided the boards of registration shall not be required to prepare nor the town clerks to post a new list of voters; and for this purpose the boards of registration shall be in session on the 3 secular days next preceding that election, the first and second days thereof to be devoted to registration of voters and the last day to enable the boards to verify the corrections of the lists and to complete and close up their records of that session. The town clerk shall reduce the subject matter of this Act to the following question: "Shall 'An Act to Incorporate the Vinalhaven Water District,' passed by the Second Regular Session of the 108th Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. In view of the emergency cited in the preamble, this Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters of that district voting at that election, but only if the total number of votes cast for and against the acceptance of this Act in that special election equals or exceeds 20% of the total number of names on the check list of voters of the Town of Vinalhaven provided for herein, which check list shall be used at that election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

The results of these elections shall be declared by the municipal officers of the

Town of Vinalhaven and due certificate thereof filed by the town clerk with the Secretary of State.

STATEMENT OF FACT

The purpose of this bill is set forth in the preamble.