

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

No. 642

S.P. 252

In Senate, March 7, 1989

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator KANY of Kennebec.

Cosponsored by Senator TITCOMB of Cumberland, Senator TWITCHELL of Oxford and Representative SIMPSON of Casco.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Amend the Lake Watershed Association Enabling Laws.

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

3 Sec. 1. 38 MRSA §2001, as enacted by PL 1987, c. 711, is  
5 amended to read:

7 §2001. Watershed districts authorized

9 Watershed districts may be created pursuant to this section  
11 to protect, restore and maintain the water quality of great ponds  
13 and to manage and conserve the land and water resources of  
15 watersheds of great ponds within the jurisdictions of these  
17 districts. The terms "watershed district" and "lake management  
district" are used interchangeably in this chapter. The term  
"participating water district," as used in this chapter, means a  
water district, as defined by Title 35-A, section 6101,  
subsection 3, included in the application provided for by section  
2002.

21 Sec. 2. 38 MRSA §2002, sub-§§1, 4, 5 and 6, as enacted by PL  
1987, c. 711, are amended to read:

23 1. Application. The municipal officers of the municipality  
25 or municipalities, or portions thereof of the municipality or  
27 municipalities, or the residents of unorganized territory that  
29 who desire to form a watershed district shall file an application  
31 with the Board of Environmental Protection on a form or forms to  
33 be prepared by the board, setting forth the name or names of the  
35 municipality or municipalities, or portions thereof of the  
37 municipality or municipalities, or, in the case of residents of  
unorganized territory, the names of those residents that propose  
39 to be included in the district and they shall furnish such other  
41 data as the board may determine necessary and proper. The  
application shall contain, but not be limited to, a description  
of the territory of the proposed district, the names of water  
districts which utilize water from surface or ground water  
supplies within the territory of the proposed district, the name  
proposed for the district which shall include the words  
"watershed district" or "lake management district" and a  
statement showing the existence in such territory of the need for  
a coordinated approach to lake watershed management as provided  
in this chapter.

43 4. Approval of application. After the public hearing on  
45 the evidence received at the hearing, the board shall make  
47 findings of fact and conclusions and determine of record whether  
49 or not the conditions requisite for the creation of a watershed  
51 district exist in the territory described in the application. If  
53 the board finds that such conditions do exist, it shall issue an  
order approving the proposed district as conforming to the  
requirements of this chapter and designating the name of the  
proposed district. The board shall give notice to participating  
later districts, the municipal officers within the municipality  
or municipalities involved and, when unorganized territory is

1 involved, to the persons signing the application mentioned in  
2 subsection 1 and the commissioners of the county in which the  
3 unorganized territory is located of a date, time and place of a  
4 meeting of the municipal officers of the municipality or  
5 municipalities involved and, when unorganized territory is  
6 involved, a joint meeting of all the persons signing the  
7 application mentioned in subsection 1 and the commissioners of  
8 the county in which the unorganized territory is located. The  
9 notice shall be in writing and sent by registered or certified  
10 mail, return receipt requested, to the addresses shown on the  
11 application mentioned in subsection 1 and, in the case of county  
12 commissioners, to the addresses of those commissioners obtained  
13 from the county clerk. A return receipt properly endorsed shall  
14 be evidence of the receipt of notice. The notice shall be mailed  
15 at least 10 days prior to the date set for the meeting.

17 5. Denial of application. If the board, after that public  
18 hearing, determines that the creation of a watershed district in  
19 the territory described in the application is not warranted for  
20 any reason, it shall make findings of fact and conclusions and  
21 enter an order denying its approval. The board shall give notice  
22 of that denial by mailing certified copies of the decision and  
23 order to participating water districts, the municipal officers of  
24 the municipality or municipalities involved and, when unorganized  
25 territory is involved, to the persons signing the application  
26 mentioned in subsection 1 and the commissioners of the county in  
27 which the unorganized territory is located. No application for  
28 the creation of a watershed district, consisting of exactly the  
29 same territory, may be entertained within one year after the date  
30 of the issuance of an order denying approval of the formation of  
31 that watershed district, but this provision shall not preclude  
32 action on an application for the creation of a watershed district  
33 embracing all or part of the territory described in the original  
34 application, provided that another municipality or fewer  
35 municipalities, or other or fewer sections thereof, are involved  
36 or that a different area of unorganized territory is involved or,  
37 in the case of an application made solely by residents of  
38 unorganized territory, that an allegation of change in  
39 circumstances from those existing on the date of the previous  
40 application must be furnished to the board with the resubmitted  
41 application.

43 6. Joint meeting. The persons, other than participating  
44 water districts, to whom the notice described in subsection 3 is  
45 directed shall meet at the time and place appointed. When more  
46 than one municipality or unorganized territory is involved, the  
47 persons shall organize by electing a chairman and a secretary. No  
48 action may be taken at any such meeting unless, at the time the  
49 meeting is convened, there are present at least 1/2 of the total  
50 number of municipal officers eligible to attend and participate  
51 at the meeting and, when the proposed district includes or is  
composed solely of unorganized territory, at least 2/3 of the

1 persons signing the application mentioned in subsection 1 and at  
2 least 2 commissioners of the county in which the unorganized  
3 territory is located, other than to report to the Board of  
4 Environmental Protection that a quorum was not present and to  
5 request the board to issue a new notice for another meeting. The  
6 purpose of the meeting shall be to determine a fair and equitable  
7 number of trustees, subject to section 2004, to be elected by and  
8 represent each participating municipality or, in the case of  
9 unorganized territory, the residents of that territory within the  
10 bounds of the proposed district. When a decision has been reached  
11 on the number of trustees and the number to represent each  
12 municipality or the residents of the unorganized territory within  
13 the bounds of the proposed district, subject to the limitations  
14 provided, this decision shall be reduced to writing by the  
15 secretary and must be approved by a 2/3 vote of those present.  
16 When 2 or more municipalities are, or unorganized territory is,  
17 involved, the vote so reduced to writing and the record of the  
18 meeting shall be signed by the chairman chair and attested by the  
19 secretary and filed with the board. When a single municipality is  
20 involved, a copy of the vote of the municipal officers duly  
21 attested by the clerk of the municipality shall be filed with the  
22 board.

23  
24 **Sec. 3. 38 MRSA §2002, sub-§6-A is enacted to read:**

25  
26 6-A. Water district representation. The trustees of each  
27 participating water district shall annually appoint one water  
28 district official or staff person to serve as a trustee of the  
29 watershed district for a one-year term.

30  
31 **Sec. 4. 38 MRSA §2003, as enacted by PL 1987, c. 711, is**  
32 **amended to read:**

33  
34 **§2003. Approval and organization**

35  
36 When the residents of the municipality or each municipality,  
37 when more than one is involved, or the unorganized territory  
38 within the proposed watershed district have voted upon the  
39 formation of a proposed watershed district and all of the other  
40 questions submitted therewith, the clerk of each municipality  
41 and, when the proposed district includes unorganized territory,  
42 the county clerk shall make a return to the Board of  
43 Environmental Protection in such form as the board determines. If  
44 the board finds from the returns that a majority of the residents  
45 within each of the municipalities involved and, when the proposed  
46 district includes unorganized territory, that a majority of the  
47 residents of the unorganized territory within the proposed  
48 watershed district, voting on each of the articles and questions  
49 submitted to them, have voted in the affirmative and have elected  
50 the necessary trustees and the names of those elected to  
51 represent each municipality, or the residents of the unorganized  
territory within the proposed watershed district, that each

1 participating water district has appointed a trustee as provided  
3 by section 2002, subsection 6-A, and that all other steps in the  
5 formation of the proposed watershed district are in order and in  
7 conformity with law, the board shall make a finding to that  
9 effect and record the same upon its records. The board shall,  
11 immediately after making its findings, issue a certificate of  
13 organization in the name of the watershed district in such form  
15 as the board determines. The original certificate shall be  
17 delivered to the trustees on the day that they are directed to  
organize and a copy of the certificate duly attested by the  
Commissioner of Environmental Protection shall be filed and  
recorded in the Office of the Secretary of State. The issuance of  
that certificate by the board shall be conclusive evidence of the  
lawful organization of the watershed district. The watershed  
district shall not be operative until the date set by the board  
under section 2006.

19 **Sec. 5. 38 MRSA §2004, sub-§1,** as enacted by PL 1987, c. 711,  
is amended to read:

21 **1. Authorization.** All the affairs of a watershed district  
23 shall be managed by ~~an-elected~~ a board of trustees which . The  
25 board shall consist of not less than 3 trustees, or not less than  
27 5 trustees in watershed districts involving more than one  
29 municipality or one or more municipalities and residents of an  
31 unorganized territory. In addition, the board shall consist of  
33 one trustee representing each participating water district.  
35 Trustees, other than those representing participating water  
37 districts, shall be elected in accordance with this chapter. The  
exact number of trustees shall be determined in accordance with  
section 2002. A watershed district may alter the number of  
trustees by submitting the proposed alteration to the voters in  
the same manner as provided in section 2002, subsection 7. No  
municipality nor unorganized territory within any watershed  
district may have less than one trustee. A quorum of the trustees  
may conduct the affairs of the district even if there is a  
vacancy on the board of trustees.

39 **Sec. 6. 38 MRSA §2005, first ¶,** as enacted by PL 1987, c. 711,  
41 is amended to read:

43 Trustees Except for trustees representing participating  
45 water districts, whose selection is governed by section 2002,  
47 subsection 6-A, trustees shall be nominated and elected in the  
49 same manner as municipal officers are nominated and elected under  
51 Title-30 Title 30-A, or in accordance with a municipal charter,  
whichever is applicable; or, in the case of unorganized  
territory, in accordance with the procedure for the organization  
of larger townships set forth in Title-30,--section-5602 Title  
30-A, section 7001. Upon receipt of the names of all the  
trustees, the Board of Environmental Protection shall set a time,  
place and date for the first meeting of the trustees, notice of

1 the meeting to be given to the trustees by certified or  
2 registered mail, return receipt requested, mailed at least 10  
3 days prior to the date set for the meeting, to determine the  
4 length of their terms. The Except for trustees representing water  
5 districts whose term is set by section 2002, subsection 6-A, the  
6 terms shall be determined by lot in accordance with the following  
7 table:

9

TERM

11 Total number			
12 of trustees	1 year	2 years	3 years
13 5	1	2	2
14 6	2	2	2
15 7	2	2	3
16 8	2	3	3
17 9	3	3	3
18 10	3	3	4
19 11	3	4	4
20 12	4	4	4
21 13	4	4	5
22 14	4	5	5
23 15	5	5	5
24 16	5	5	6
25 17	5	6	6
26 18	6	6	6

27

28 The trustees shall enter on their records the determination so  
29 made. The trustees shall serve their terms as determined at the  
30 organizational meeting, except that, in the case of trustees  
31 representing a municipality, those trustees shall serve an  
32 additional period until the next regular election of the  
33 municipality and, thereafter, those trustees' terms of office  
34 shall date from the time of each regular municipal election; and  
35 except that, in the case of trustees representing residents of  
36 unorganized territory, those trustees shall serve until an  
37 election to fill the vacancies caused by the expiration of their  
38 terms shall be called by the county commissioners. The  
39 commissioners shall call the election in the same manner provided  
40 for the initial election of trustees and cause that election to  
41 be held on a date as closely following the date upon which the  
42 terms expire.

43

44 **Sec. 7. 38 MRSA §2005**, as enacted by PL 1987, c. 711, is  
45 amended by adding after the 2nd paragraph a new paragraph to read:

46 At the first organizational meeting, the trustees shall  
47 determine the percentage of the watershed district's operating

1 budget to which each participating water district shall  
3 contribute. The agreed upon contribution of a participating  
5 water district may not be changed during the fiscal year unless  
7 the participating water district approves the change. The  
9 percentage contribution of a participating water district may be  
11 reviewed and changed by the trustees at the end of the fiscal  
13 year.

15 **Sec. 8. 38 MRSA §2008, sub-§4,** as enacted by PL 1987, c. 711,  
17 is amended to read:

19 **4. Budget approval.** The trustees shall thoroughly explain  
21 the proposed budget and the voters of the district shall be given  
23 an opportunity to be heard. ~~A budget must be approved by the~~  
25 ~~voters of the district at the district budget meeting.~~ At the  
27 district budget meeting, only those items dealing with the  
29 expenses necessary to operate the district, appropriations for a  
31 reserve fund and capital outlay shall be subject to change by the  
33 voters. ~~If a budget for the operation of the district is not~~  
~~approved prior to July 1st in any year, the budget as submitted~~  
~~by the trustees for operational expenses, reserve fund and~~  
~~capital outlay purposes shall be automatically considered the~~  
~~budget approved for operational expenses in the ensuing fiscal~~  
~~year.~~ The initial budget submitted by the trustees of the  
watershed district following the district's formation and  
organization must be approved by the voters at the district  
budget meeting. If the initial budget is not approved by July  
1st, the trustees shall make as many revisions and conduct as  
many meetings as necessary to secure budget approval by the  
voters. If a budget for the operation of the district is not  
approved prior to July 1st in any following year, the previous  
fiscal year's budget shall automatically be considered the  
approved budget for that fiscal year.

35 **Sec. 9. 38 MRSA §2010, sub-§1,** as enacted by PL 1987, c. 711,  
37 is amended to read:

39 **1. Method.** Following adoption of the district budget, the  
41 trustees shall issue their warrants, in substantially the same  
43 form as the warrant of the Treasurer of State, for taxes to each  
45 participating municipality requiring it to pay its proportionate  
47 part of the district budget. Each municipality's proportionate  
49 part of the budget shall be based upon its percentage of  
51 shoreline frontage on the great ponds within the district's  
53 territory, or an alternative method unanimously agreed upon by  
all the municipalities.

## 55 STATEMENT OF FACT

57 The purpose of this bill is to facilitate the creation of  
59 watershed and lake management associations. Current law provides



1 for the formation of these organizations whose aim is to protect,  
2 restore and maintain the water quality of Maine's great ponds and  
3 the water resources of the watersheds of great ponds.

5 The bill gives a voting role to water districts which use  
6 water resources in the territory of the watershed or lake  
7 management association. Each water district may appoint a  
8 trustee to the board of the association. The bill makes each  
9 water district responsible for a percentage of the operating  
10 costs of the association. The trustees at their initial  
11 organization meeting will agree upon the appropriate share. The  
12 intention is to give water utilities a voice in decision-making  
13 affecting the water resources they utilize and to give the  
14 associations access to the financial and technical support of the  
15 utilities.

17 The bill also seeks to enhance the role of the public. The  
18 bill requires that voters approve the association's initial  
19 budget. Current law provides that, if voter approval cannot be  
20 obtained by July 1st of a given year, the association's proposed  
21 budget automatically becomes its approved budget. Under the  
22 bill, this automatic approval provision applies only to ensuing  
23 budgets. An association's first budget must be approved by the  
24 voting public.

25 Finally, the bill allows municipalities to allocate their  
26 share of the budget among themselves by a method other than that  
27 provided for by current law, i.e. on the basis of each town's  
28 shorefront along the district's great ponds, if the  
29 municipalities unanimously agree to a different method.  
30  
31