

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1723

S.P. 629

In Senate, June 5, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERKINS of Hancock.

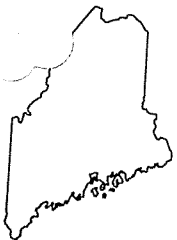
Cosponsored by Representative HUTCHINS of Penobscot and Senator BOST of Penobscot.

STATE OF MAINE

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

An Act to Create the Deer Isle Water District.

(EMERGENCY)
(After Deadline)



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

5 Whereas, an adequate supply of pure water is essential to
the health and well-being of the inhabitants of the Town of Deer
7 Isle; and

9 Whereas, the present water system is inadequate to protect
the quality of the water, health and well-being of some of the
11 inhabitants of the Town of Deer Isle; and

13 Whereas, it is desirable that a public district be formed in
part of Deer Isle to be able to supply water to the people of the
15 area; and

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

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

25 **Sec. 1. Territorial limits; corporate name; purposes.** Subject to
section 15 of this Act, the inhabitants and territory of that
27 part of the Town of Deer Isle in Hancock County comprised of the
area beginning at the intersection of Route 15 and Main Street,
29 thence south on Route 15 for 500 feet, thence west to the
coastline, thence northwesterly along the coastline to the
31 junction with the causeway, thence east on Main Street to the
point of beginning, shall constitute a body politic and corporate
33 under the name of "The Deer Isle Water District" for the purpose
of supplying the inhabitants and others of the district with pure
35 water for domestic, sanitary, commercial, industrial,
agricultural and municipal purposes.

37 **Sec. 2. Powers of Deer Isle Water District.** The Deer Isle Water
39 District is authorized, for the purposes of its incorporation, to
take, collect, store, flow, use, divert, distribute and convey to
41 the district, or any part of the district, water from any source,
natural or artificial, within the area of the Town of Deer Isle.
43 It is also authorized to locate, construct and maintain
aqueducts, pipes, conduits, dams, wells, reservoirs, standpipes,
45 hydrants, pumping stations and other necessary structures and
equipment, and do anything necessary to furnish water for public
47 purposes and for the public health, comfort and convenience of
the inhabitants and others of the district, or to contract to do
49 any and all of the foregoing things. The district may not take,
withdraw or divert water from any source for the purposes stated
51 in this Act, unless it has filed a written petition and obtained

1 the approval of the Public Utilities Commission. The petition
2 shall include a plan for the taking, withdrawal or diversion of
3 water. The petition and plan shall set forth adequate
4 information upon which findings may be made regarding the nature,
5 capacity, safe yield and rechargeability of the source, the
6 amount of water to be taken over time and other existing and
7 projected uses and demands on the source. The commission may by
8 rule or order prescribe other information to be contained in the
9 petition and plan. The commission may not approve a petition
10 unless it finds that the plan ensures that adequate water remains
11 in the source to meet the reasonable needs of existing and
12 projected demands on the source. The commission may impose
13 reasonable terms, conditions or other requirements on the plan.
14 The commission shall issue its order approving or disapproving
15 the plan within 9 months after it determines the petition to be
16 complete.

17
18 All incidental powers, rights and privileges necessary to
19 the accomplishment of the main objectives set forth in this Act
20 are granted to the district created by this Act.

21
22 **Sec. 3. Authorization to lay mains, pipes, conduits, aqueducts, fixtures**
23 **and appurtenances through public ways and across private lands.** The
24 district is authorized to lay in and through the streets, roads,
25 ways, highways and bridges in the Town of Deer Isle and across
26 private lands in the Town of Deer Isle, and to maintain, repair
27 and replace all pipes, mains, conduits, aqueducts and fixtures
28 and appurtenances as may be necessary and convenient for its
29 corporate purposes and, whenever the district shall lay any
30 pipes, mains, conduits, aqueducts and fixtures or appurtenances
31 in any street, road, way or highway, it shall cause the same to
32 be done with as little obstruction as practicable to the public
33 travel and shall, at its own expense, without unnecessary delay,
34 cause the earth and pavement removed by it to be replaced in
35 proper condition.

36
37 **Sec. 4. Authorization to erect dams and reservoirs; to cross navigable**
38 **waters; to supply water to utilities.** The district is authorized, for
39 the purposes of its incorporation, to erect and maintain all
40 dams, reservoirs and structures necessary and convenient for its
41 corporate purposes. The water district is also authorized to
42 lay, construct and maintain its pipes and fixtures in, over and
43 under navigable waters and to build and maintain structures
44 therefor.

45
46 **Sec. 5. Rights of eminent domain.** The district, for the
47 purposes of its incorporation, is authorized to take and hold, as
48 for public uses, real estate and personal property, and any
49 interest therein, located in the Town of Deer Isle, necessary or
50 convenient for those purposes, by purchase, lease or otherwise
51 and is expressly authorized to exercise the right of eminent
52 domain, as provided in this Act, to acquire for those purposes
53 any land or interest in land or water rights necessary for

1 erecting and maintaining dams, plants and works; for flowage,
2 power, pumping and supplying water through its mains; for
3 reservoirs; for preserving the purity of the water and watershed;
4 for laying and maintaining aqueducts and other structures for
5 taking, distributing, discharging and disposing of water; and for
6 rights-of-way or roadways to its sources of supply, dams, power
7 stations, reservoirs, mains, aqueducts, structures and lands.

9 The district is authorized, for the purposes of its
10 incorporation, to erect and maintain all dams, reservoirs and
11 structures necessary and convenient for its corporate purposes.
12 Nothing contained in this section may be construed as authorizing
13 the district to take by right of eminent domain any of the
14 property or facilities of any other public utility used, or
15 acquired for future use, by the owner of that property or
16 facilities in the performance of a public duty, unless expressly
17 authorized to do so by this section, by subsequent act of the
18 Legislature or as provided in section 6.

19 **Sec. 6. Procedure if public utility crossed.** In case of crossing of
20 any public utility, unless consent is given by the company owning
21 and operating the public utility as to place, manner and
22 conditions of the crossing within 30 days after consent is
23 requested by the district, the Public Utilities Commission, upon
24 petition by the district, shall determine the place, manner and
25 conditions of the crossing, and all work on the property of the
26 public utility shall be done under the supervision and to the
27 satisfaction of the public utility, or as prescribed by the
28 Public Utilities Commission, but at the expense of the district.

31 **Sec. 7. Procedure in exercising right of eminent domain.** In
32 exercising the right of eminent domain in the taking of land,
33 interests therein or water rights, the district shall file in the
34 office of the county commissioners of Hancock County and record
35 in the Hancock County registry of deeds plans of the location of
36 all property to be taken, with an appropriate description and the
37 names of the owners, if known. Notice of the filing shall be
38 sent by mail to the owners at the address appearing on the tax
39 records of the municipality in which the land is located. When
40 for any reason the district fails to acquire the property which
41 it is authorized to take and which is described in that location,
42 or if the location recorded is defective or uncertain, it may at
43 any time correct and perfect that location and file a new
44 description, and in such case the district is liable in damages
45 only for property for which the owner had not previously been
46 paid, to be assessed at the time of the original taking, and the
47 district is not liable for any acts which would have been
48 justified if the original taking had been lawful. No entry may
49 be made on any private lands, except to make surveys, until the
50 expiration of 10 days from that filing, at which time possession
51 may be had of all

1 lands, interests therein or water rights so taken, but title
shall not vest in the district until payment is received.

3
4 **Sec. 8. Adjustment of damages; procedure as in laying out of**
5 **highways.** If any person sustaining damages by any taking
6 pursuant to the right of eminent domain shall not agree with the
7 district upon the sum to be paid, either party, upon petition to
8 the county commissioners of Hancock County, may have the damages
9 assessed by them. The procedure and all subsequent proceedings
10 and right of appeal shall be under the same restrictions,
11 conditions and limitations as are or may be by law prescribed in
12 the case of damages by the laying out of highways.

13
14 **Sec. 9. Trustees; election; first board; meeting; officers.** All of the
15 affairs of the district shall be managed by a board of trustees
16 composed of 5 members, all of whom shall be residents of the
17 district and elected as provided in the Maine Revised Statutes,
18 Title 35-A, chapter 63 and this section.

19
20 **1. First board.** Within 14 days after the acceptance of
21 this Act, the selectmen of the Town of Deer Isle, who are
22 especially appointed for this purpose, shall give notice of a
23 special election of the Deer Isle Water District, for the purpose
24 of selecting the first board of trustees, by posting a notice at
25 least 30 days prior to the date set for election. The notice
26 shall be published in one public and conspicuous place in the
27 Town of Deer Isle. The candidates for office shall obtain
28 nomination papers from the clerk of the Town of Deer Isle, who is
29 appointed especially to act as clerk in this particular
30 instance. The form of the nomination papers and the ballot shall
31 be as provided in this Act. After the selection of the first
32 board, the only eligibility requirements for the office of
33 trustee of the district shall be residence within the district
34 and eligibility to vote, and all subsequent trustees shall be
35 elected as provided in the Maine Revised Statutes, Title 35-A,
36 chapter 63, in the annual election to be held on the first
37 Saturday of March in each year.

38
39 **Organization of the board of trustees and its specific**
40 **powers shall be in accordance with the Maine Revised Statutes,**
41 **Title 35-A, chapter 63. The first order of business shall be to**
42 **draw by lot to fix the terms of the trustees. Of the original**
43 **trustees, 2 trustees shall serve for one year, 2 trustees for 2**
44 **years and one trustee for 3 years. Thereafter, trustees shall be**
45 **selected to serve for 3-year terms.**

46
47 **2. Decisions of the board.** All decisions of the board of
48 trustees shall be by a majority of those present and voting. A
49 quorum of the board of trustees shall be 3 trustees.

1 **3. Compensation.** Trustees' compensation shall be set in
accordance with the Maine Revised Statutes, Title 35-A, chapter
3 63.

5 **4. Vacancies; incompatible offices.** Whenever the term of
office of a trustee expires, a successor shall be elected by a
7 plurality vote by the inhabitants of the district and upon
nomination made as provided in this section for the election of
9 trustees. For the purpose of election, a special election shall
be called by the trustees of the district in the same manner as
11 town meetings are called, and held on the first Saturday of March
in each year. For this purpose, the trustees are vested with the
13 powers of selectmen of towns. The trustees so elected shall
serve the full term of 3 years. In case any vacancy arises in
15 the membership of the board of trustees, it shall be filled in
like manner for the unexpired term by special election to be
17 called by the trustees of the district. When any trustee ceases
to be a resident of the district, that trustee shall vacate the
19 office of trustee and the vacancy shall be filled as provided in
this section. All trustees shall be eligible for reelection, but
21 no person holding office of selectman or road commissioner in the
Town of Deer Isle may be eligible for nomination or election as a
23 trustee.

25 **5. Additional powers.** The trustees may procure an office
and incur such expenses as may be necessary.

27 The trustees shall appoint a registrar of voters for the
29 district, who may also be the registrar of voters for the Town of
Deer Isle, and fix the salary of the registrar. It shall be the
31 registrar's duty to make and keep a complete list of all the
eligible voters of the district. The list prepared by the
33 registrar, as provided by the laws of the State, shall govern the
eligibility of any voter. In determining the eligible voters of
35 the district, the registrar of voters shall exclude from the
lists and from all checklists the legal voters who are resident
37 outside the territorial limits of the district as defined in this
Act. All warrants issued for elections by the trustees shall be
39 varied accordingly to show that only the voters resident within
the territorial limits of the water district are entitled to vote.

41 **Sec. 10. Annual report.** The trustees shall make and publish
43 an annual report, including a report of the treasurer, and the
report may be included in, and published as part of, the annual
45 town report of the Town of Deer Isle.

47 **Sec. 11. District and towns authorized to make and assume
contracts.** The district, through its trustees, is authorized to
49 contract with persons and corporations, including the Town of
Deer Isle, and the Town of Deer Isle is authorized to contract
51 with the district for the supply of water for municipal purposes.

1 **Sec. 12. Authorization to receive governmental aid; borrow money;**
2 **issue bonds and notes.** For accomplishing the purposes of this Act
3 and for other expenses as may be necessary for the carrying out
4 of these purposes, the district, through its trustees, without
5 vote of the inhabitants, is authorized to receive both state and
6 federal aid grants and to borrow money temporarily and to issue
7 negotiable notes for the purpose of renewing and refunding the
8 indebtedness so created for paying any necessary expenses and
9 liabilities incurred under this Act, including organizational and
10 other necessary expenses and liabilities whether incurred by the
11 district or the Town of Deer Isle, the district being authorized
12 to reimburse the Town of Deer Isle for any such expense incurred
13 and in acquiring properties, paying damages, laying pipes, mains,
14 aqueducts and conduits, constructing, maintaining and operating a
15 water plant or system and making renewals, additions, extensions
16 and improvements to the same and to cover interest payments
17 during the period of construction. The district through its
18 trustees is authorized to issue, in accordance with the Maine
19 Revised Statutes, Title 35-A, chapter 63, from time to time,
20 bonds, notes or other evidence of indebtedness of the district in
21 such amount or amounts bearing interest at such rate or rates,
22 selling at par, discount or premium, and other terms and
23 provisions, as the trustees shall determine, except that loans
24 running for one year or less do not require the Public Utilities
25 Commission's approval.

27 The bonds, notes and evidences of indebtedness may be issued
28 to mature serially or made to run for periods as the trustees
29 determine. Bonds, notes or evidences of indebtedness may be
30 issued with or without provisions for calling the same prior to
31 maturity and, if callable, may be made callable at par or at a
32 premium as the trustees determine. All bonds, notes or other
33 evidences of indebtedness shall have inscribed upon their face
34 the words "Deer Isle Water District," shall be signed by the
35 treasurer and countersigned by the president of the board of
36 trustees of the district and, if coupon bonds are issued, the
37 interest coupon attached to the coupon bonds shall bear the
38 facsimile signature of the treasurer.

39 The bonds, notes and evidences of indebtedness so issued by
40 the district shall be legal obligations of the district, which is
41 declared to be a quasi-municipal corporation within the meaning
42 of the Maine Revised Statutes, Title 30-A, section 5701, and all
43 provisions of that section shall be applicable to the district.

44 The district may refund and reissue, from time to time, in
45 one or in separate series, its bonds, notes and other evidences
46 of indebtedness, and each authorized issue shall constitute a
47 separate loan. All bonds, notes and evidences of indebtedness
48 issued by the district shall be legal investments for savings
49 banks in the State and shall be free from taxation.
50

1 **Sec. 13. Rates; application of revenue; sinking fund.** Individuals,
2 firms and corporations, whether private, public or municipal,
3 shall pay to the treasurer or other designated officer of the
4 district the rates established by the board of trustees for the
5 water used by them. The rates shall be established in accordance
6 with the Maine Revised Statutes, Title 35-A, chapter 61, to
7 provide for the purposes set forth in that chapter.

8 **Sec. 14. Existing statutes not affected; rights conferred subject to**
9 **provisions of law.** Nothing contained in this Act is intended to
10 repeal, or may be construed as repealing, the whole or any part
11 of any existing law, and all the rights and duties mentioned in
12 this Act shall be exercised and performed in accordance with all
13 the applicable provisions of the Maine Revised Statutes, Title
14 35-A, and all acts amendatory and additional to that Title, to
15 the extent that these laws affect the operations of the district.
16

17 **Sec. 15. Separability clause.** If any section or part of a
18 section of this Act shall be held invalid by a court of competent
19 jurisdiction, the holding shall not affect the remainder of this
20 Act, with the intention that the remaining portions of this Act
21 shall stand, notwithstanding, the unconstitutionality or
22 invalidity of any section, sentence, clause or phrase.
23

24 **Sec. 16. Referendum; effective date.** This Act shall take effect
25 when approved only for the purpose of permitting its submission
26 to the legal voters of the district at a special election or
27 elections called and held for the purpose. The election or
28 elections shall be called by the municipal officers of the Town
29 of Deer Isle and shall be held at the regular voting places. The
30 dates of the elections shall be determined by the municipal
31 officers, but the first meeting of the town shall not be later
32 than December 1, 1989. These special elections shall be called,
33 advertised and conducted according to the laws relating to
34 municipal elections, provided that the board of registration is
35 not required to prepare, nor the town clerk to post, a new list
36 of voters. For this purpose, the board of registration shall be
37 in session on the 3 secular days preceding each election, the
38 first and 2nd days to be devoted to registration of voters and
39 the last day to enable the board to verify the corrections of the
40 lists and to complete and close up its records of the session.
41 The town clerk shall reduce the subject matter of this Act to the
42 following question:
43

44 "Shall 'An Act to Create the Deer Isle Water District'
45 passed by the Legislature be accepted?"
46

47 The voters shall indicate by a cross or check mark placed
48 against the words "Yes" or "No" their opinion of the same. This
49 Act shall take effect immediately upon its acceptance by a
50 majority of the legal voters of the district voting at the
51

1 elections, but only if the total number of votes cast for and
3 against the acceptance of this Act in the special elections
5 equals or exceeds 20% of the total number of names on the
7 checklist of voters of the district provided for in this Act,
which checklist shall be used at these elections, but failure of
approval by the necessary majority or percentage of voters shall
not prevent subsequent elections.

9 The result of these elections shall be declared by the
11 municipal officers of the town and due certificates of the result
filed by the town clerk with the Secretary of State.

13 **Emergency clause.** In view of the emergency cited in the
15 preamble, this Act shall take effect when approved.

17
19
21
STATEMENT OF FACT

This bill authorizes the creation of the Deer Isle Water
District in the Town of Deer Isle.