

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

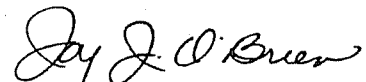
No. 2323

S.P. 917

In Senate, February 16, 1990

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.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERKINS of Hancock.

Cosponsored by Representative CONSTANTINE of Bar Harbor.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Create the Winter Harbor Water District.

(After Deadline)



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

2
4 **Sec. 1. Territorial limits; corporate name; purposes.** The
6 inhabitants and territory of the Town of Winter Harbor in the
8 County of Hancock shall constitute a body politic and corporate
10 under the name of "Winter Harbor Water District" for the purpose
12 of supplying the town and the inhabitants and others of the
14 district with pure water for domestic, sanitary, commercial,
16 industrial, agricultural and municipal purposes.

18 **Sec. 2. Powers of Winter Harbor Water District.** The Winter
20 Harbor Water District, for the purposes of its incorporation, may
22 take, collect, store, flow, use, divert, distribute and convey to
24 the district, or any part of the district, water from any source
26 approved by the Department of Human Services, natural or
28 artificial, within the area of the Town of Winter Harbor and from
30 any other source from which the Winter Harbor Water Company may
32 take water. It may also locate, construct and maintain
34 aqueducts, pipes, conduits, dams, wells, reservoirs, standpipes,
36 hydrants, pumping stations and other necessary structures and
38 equipment therefor, and do anything necessary to furnish water
40 for public purposes and for the public health, comfort and
42 convenience of the inhabitants and others of the district, or to
44 contract to do any and all of the foregoing things.

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

30 **Sec. 3. Authorized to lay mains, pipes, conduits and other water**
32 **conveyances through public ways and across private lands.** The district
34 may lay in and through the streets, roads, ways, highways and
36 bridges in the Town of Winter Harbor and across private lands in
38 the Town of Winter Harbor and maintain, repair and replace, all
40 such pipes, mains, conduits, aqueducts and fixtures and
42 appurtenances as may be necessary and convenient for its
44 corporate purposes and, whenever the district shall lay any
46 pipes, mains, conduits, aqueducts and fixtures or appurtenances
48 in any street, road, way or highway, it shall cause the same to
be done with as little obstruction as practicable to the public
travel and, at its own expense, without unnecessary delay, shall
cause the earth and pavement removed by it to be replaced in
proper condition.

46 **Sec. 4. Authorized to erect dams and reservoirs; to cross navigable**
48 **waters; to supply water to utilities.** The water district, for the
purposes of its incorporation, may erect and maintain all dams,
reservoirs and structures necessary and convenient for its
corporate purposes. The water district may lay, construct and

2 maintain its pipes and fixtures in, over and under navigable
3 waters and build and maintain structures therefor, subject to the
4 laws of the United States. The water district may supply water
5 to any public utility now supplying water in the County of
6 Hancock, subject to the consent of the Public Utilities
7 Commission.

8 **Sec. 5. Rights of eminent domain.** The district, for the
9 purposes of its incorporation, may take and hold, as for public
10 uses, real estate and personal estate and any interest therein
11 necessary or convenient for those purposes, by purchase, lease or
12 otherwise and may exercise the right of eminent domain as
13 provided in this Act, to acquire for those purposes any land or
14 interest in land or water rights necessary for erecting and
15 maintaining dams, plants and works, for flowage, power, pumping,
16 supplying water through its mains; for reservoirs, preserving the
17 purity of the water and watershed; for laying and maintaining
18 aqueducts and other structures; for taking, distributing,
19 discharging and disposing of water; and for rights-of-way or
20 roadways to its sources of supply, dams, power stations,
21 reservoirs, mains, aqueducts, structures and lands.

22
23 Nothing contained in this section may be construed as
24 authorizing the district to take by right of eminent domain any
25 of the property or facilities of any other public utility used,
26 or acquired for future use, by the owner of that property or
27 those facilities in the performance of a public duty, unless
28 expressly authorized to do so by this section or by subsequent
29 Act of the Legislature or as provided in section 6.

30
31 **Sec. 6. Procedure if public utility must be crossed.** In case of
32 crossing of any public utility, unless consent is given by the
33 company owning and operating the public utility as to place,
34 manner and conditions of the crossing within 30 days after
35 consent is requested by the district, the Public Utilities
36 Commission, upon petition by the district, shall determine the
37 place, manner and conditions of the crossing, and all work on the
38 property of the public utility must be done under the supervision
39 and to the satisfaction of the public utility or as prescribed by
40 the Public Utilities Commission, but at the expense of the
41 district.

42
43 **Sec. 7. Procedure in exercising of eminent domain.** After the
44 original acquisition for which provision is made in section 12,
45 the district, in exercising, from time to time, any right of
46 eminent domain in the taking of land, interest therein or water
47 rights, shall file in the office of the county commissioners of
48 Hancock County and record in the Hancock County Registry of Deeds
49 plans of the location of all such property to be taken, with an
50 appropriate description and the names of the owners, if known.
Notice of the filing must be sent by mail to the owners at the

2 address appearing on the tax records of the municipality in which
the land is located. When for any reason the district fails to
4 acquire the property it is authorized to take, and which is
described in that location, or if the location recorded is
6 defective or uncertain, it may, at any time, correct and perfect
that location and file a new description, and in such case the
8 district is liable for damages only for property for which the
owner had not previously been paid, to be assessed as of the time
10 of the original taking, and the district is not liable for any
acts that would have been justified if the original taking had
12 been lawful. Entry may not be made on any private lands, except
to make surveys, until the expiration of 10 days from that
14 filing, at which time possession may be had of all lands,
interests therein or water rights so taken, but title does not
16 vest in the district until payment therefor.

18 **Sec. 8. Adjustment of damages; procedure as in laying out of
highways.** If any person sustaining damages by any taking
pursuant to the right of eminent domain does not agree with the
20 district upon the sum to be paid therefor, either party, upon
petition to the county commissioners of Hancock County, may have
22 the damages assessed by them. The procedure and all subsequent
proceedings and right of appeal shall be had under the same
24 restrictions, conditions and limitations as are or may be by law
prescribed in the case of damages by the laying out of highways.

26 **Sec. 9. Trustees; how elected; first board; meeting; officers.** All of
28 the affairs of the district are managed by a board of trustees
composed of 3 members, all of whom must be residents of the
30 district and, after selection of the first board, elected as
provided in the Maine Revised Statutes, Title 35-A, chapter 63.

32 **1. First board.** Within 14 days after the acceptance of
34 this Act, the municipal officers of the Town of Winter Harbor,
who are especially appointed for this purpose, shall give notice
36 of a special election of the Winter Harbor Water District, for
the purpose of selecting the first board of trustees, by posting
38 a notice at least 30 days prior to the date set for election.
The notice must be published in one public and conspicuous place
40 in the Town of Winter Harbor. The candidates for office shall
obtain nomination papers from the clerk of the Town of Winter
42 Harbor, who is appointed especially to act as clerk in this
particular instance. The form of the nomination papers and the
44 form of the ballot must be as provided in this Act. After the
selection of the first board, the only requirements for
46 eligibility for the office of trustee of the district are
residence within the district and eligibility to vote.

48 As soon as convenient after its appointment, the first board

2 of trustees shall hold a meeting at a convenient place in the
3 district, to be called by any member of the board in writing
4 designating the time and place, and the notice must be delivered
5 in hand to the other 2 members not less than 2 full days before
6 the meeting, provided that the trustees elected may meet by
7 agreement without the notice and upon appropriate waiver. The
8 terms of office of the members of the first board of trustees are
9 established as follows: the member receiving the greatest number
10 of votes serves for a term of 3 years; the member receiving the
11 next highest number of votes serves for a term of 2 years; and
12 the 3rd member serves for a term of one year. In the event of a
13 tie vote, the terms of office of the members affected are
14 determined by lot. Thereafter, trustees are elected to serve for
15 3-year terms.

16 **2. Organization; conduct of business.** Organization and
17 powers of the board of trustees must be in accordance with the
18 Maine Revised Statutes, Title 35-A, chapter 63.

20 All decisions of the board of trustees must be by a majority
21 of those present and voting. A quorum of the board of trustees
22 is 2 trustees.

24 Trustees are entitled to compensation in accordance with the
25 Maine Revised Statutes, Title 35-A, chapter 63.

26 **3. Bylaws.** The trustees may adopt and establish such
27 bylaws as are necessary for their own convenience and the proper
28 management of the affairs of the district.

30 **4. Vacancy.** Whenever the term of office of a trustee
31 expires, the trustee's successor shall be elected by a plurality
32 vote by the inhabitants of the district, and upon nomination made
33 as provided in this section for the election of trustees. For
34 the purpose of election, a special election must be called and
35 held on the same date as the annual municipal election, the
36 election to be called by the trustees of the district in the same
37 manner as town meetings are called and for this purpose the
38 trustees are vested with the powers of selectmen of towns. The
39 trustee so elected shall serve the full term of 3 years. If any
40 vacancy arises in the membership of the board of trustees, it
41 must be filled in like manner for the unexpired term by a special
42 election to be called by the trustees of the district. When any
43 trustee ceases to be a resident of the district, the trustee
44 shall vacate the office of trustee and the vacancy must be filled
45 as provided in this section. All trustees are eligible for
46 reelection, but a person who is a member of the town council in
47 the Town of Winter Harbor is not eligible for nomination or
48 election as trustee.

50

2 The trustees may procure an office and incur such expenses
as may be necessary.

4 The trustees shall appoint a registrar of voters for the
district, who may also be the registrar of voters for the Town of
6 Winter Harbor, and fix the registrar's salary. It is the
registrar's duty to make and keep a complete list of all the
8 eligible voters of the district. The list prepared by the
registrar, as provided by the laws of the State, governs the
10 eligibility of any voter. In determining the eligible voters of
the district, the registrar of voters shall exclude from those
12 lists and from all checklists the legal voters who are resident
outside the territorial limits of the water district as defined
14 in this Act. All warrants issued for elections by the trustees
must be varied accordingly to show that only the voters resident
16 within the territorial limits of the water district are entitled
to vote.

18 **Sec. 10. Annual report.** The trustees shall make and publish
20 an annual report, including a report of the treasurer. The
report may be included in and published as part of the annual
22 town report of the Town of Winter Harbor.

24 **Sec. 11. District and towns authorized to make and assume
contracts.** The district, through its trustees, may contract with
26 persons and corporations, including the Town of Winter Harbor,
and the Town of Winter Harbor may contract with the district for
28 the supply of water for municipal purposes.

30 **Sec. 12. Authorized to acquire property and franchises of Winter
Harbor Water Company.** The district, through its trustees, may
32 acquire by purchase the entire plant, properties, franchises,
rights and privileges owned by the Winter Harbor Water Company,
34 located within the Town of Winter Harbor, including all lands,
waters, water rights, reservoirs, pipes, machinery, fixtures,
36 hydrants, tools and all apparatus and appliances used or usable
in supplying water in the area of the district. The district may
38 acquire by the exercise of the right of eminent domain, a right
expressly delegated to the district for that purpose, the entire
40 plant, properties, franchises, rights and privileges, except cash
assets and accounts receivable, owned by the Winter Harbor Water
42 Company, including all lands, waters, water rights, dam
structures, reservoirs, pipes, machinery, fixtures, hydrants,
44 tools and all apparatus and appliances used or usable in
supplying water in the area of the district, and if and when so
46 acquired, the district, in addition to the powers conferred by
this Act, shall have and enjoy and be entitled to exercise all
48 rights, privileges and franchises of the Winter Harbor Water
Company.

50 In exercising the right of eminent domain under this Act,
52 the trustees shall file with the district clerk a condemnation

2 order that includes a detailed description of the property
interests to be taken, the name or names of the owner or owners
4 of record so far as they can be reasonably determined and the
amount of damages determined by the trustees to be just
6 compensation for the property or interest therein taken. The
trustees shall then serve upon the owner or owners of record a
8 copy of the condemnation order and a check in the amount of the
damages awarded and record a certified copy of the condemnation
10 order in the Hancock County Registry of Deeds. In the event of
multiple ownership, the check may be served on any one of the
12 owners. This title passes to the district upon service of the
order of condemnation and check or upon recordation in accordance
14 with this Act, whichever occurs first. Acceptance and
negotiation of the check do not bar an appeal under this Act.

16 Any person aggrieved by the determination of the damages
awarded to owners of property or interests therein under this Act
18 may, within 60 days after service of the condemnation order and
check, appeal to the Superior Court of Hancock County. The court
20 shall determine damages by a verdict of its jury or, if all
parties agree, by the court without a jury or by a referee or
22 referees, and shall render judgment for just compensation, with
interest when such is due, and for costs in favor of the party
24 entitled thereto. Appeal from the decision of the Superior Court
may be had to the Law Court, as in other civil actions.

26
**28 Sec. 13. Authorized to receive government aid; borrow money; issue
bonds and notes.** For accomplishing the purposes of this Act and
for such other expenses as may be necessary for the carrying out
30 of these purposes, the district, through its trustees, without
vote of the inhabitants, may receive state and federal aid
32 grants, borrow money temporarily and issue therefor its
negotiable notes for the purpose of renewing and refunding the
34 indebtedness so created, for paying any necessary expenses and
liabilities incurred under this Act, including organizational and
36 other necessary expenses and liabilities, whether incurred by the
district or the Town of Winter Harbor, the district being
38 authorized to reimburse the Town of Winter Harbor for any such
expense incurred by the town and in acquiring properties, paying
40 damages, laying pipes, mains, aqueducts and conduits,
constructing, maintaining and operating a water plant or system
42 and making renewals, additions, extensions and improvements to
the water plant or system and to cover interest payments during
44 the period of construction. The district, through its trustees,
without the vote of its inhabitants, may also issue, from time to
46 time, in accordance with the Maine Revised Statutes, Title 35-A,
chapter 63, bonds, notes or other evidence of indebtedness of the
48 district in such amount or amounts bearing interest at such rate

2 or rates, selling at par or at a discount or a premium and having
such other terms and provisions as the trustees determine, except
4 that loans running for one year or less do not require the Public
Utilities Commission's approval.

6 The bonds, notes and evidences of indebtedness may be issued
to mature serially or made to run for such periods as the
8 trustees determine. Bonds, notes or evidences of indebtedness
may be issued with or without provisions for calling the bonds,
10 notes or evidences of indebtedness prior to maturity and, if
callable, may be made callable at par or at such premium as the
12 trustees determine. All bonds, notes or other evidences of
indebtedness must have inscribed upon their face the words
14 "Winter Harbor Water District," and be signed by the treasurer
and countersigned by the president of the board of trustees of
16 the district. If coupon bonds are issued, the interest coupon
attached to the coupon bonds must bear the facsimile signature of
18 the treasurer.

20 All bonds, notes and evidences of indebtedness so issued by
the district are legal obligations of the district, which is
22 declared to be a quasi-municipal corporation within the meaning
of the Maine Revised Statutes, Title 30-A, chapter 223,
24 subchapter III, and all provisions of that subchapter are
applicable to the district.

26 The district may refund and reissue, from time to time, in
28 one or in separate series, its bonds, notes and other evidences
of indebtedness, and each authorized issue constitutes a separate
30 loan. All bonds, notes and evidences of indebtedness issued by
the district are legal investments for savings banks in the State
32 and are free from taxation.

34 **Sec. 14. Rates.** The rates established pursuant to this
section must be sufficient to provide revenue for the purposes of
36 this Act and for all other purposes of the district, without the
need for any financial assistance from the Town of Winter Harbor,
38 other than the normal payment of water charges for services
rendered and the loan or loans for initial funds as set forth in
40 section 13. Individuals, firms and corporations, whether
private, public or municipal, shall pay to the treasurer or other
42 designated officer of the district the rates established by the
board of trustees for the water used by them. The rates must be
44 established in accordance with the Maine Revised Statutes, Title
35-A, chapter 61, to provide for the purposes set forth therein.

46
48 **Sec. 15. Existing laws not affected; rights conferred subject to
provisions of law.** Nothing contained in this Act is intended to
repeal, or may be construed as repealing, the whole or any part
50 of any existing law, and all the rights and duties mentioned in

2 this Act must be exercised and performed in accordance with all
3 the applicable provisions and amendatory Acts to the Maine
4 Revised Statutes, Title 35-A to the extent that this Title and
its amendments affect the operations of the district.

6 **Sec. 16. Separability clause.** If any section or part of a
7 section of this Act is held invalid by a court of competent
8 jurisdiction, the holding does not affect the remainder of this
9 Act, it being the intention that the remaining portions of this
10 Act stand, notwithstanding the unconstitutionality or invalidity
11 of any section, sentence, clause or phrase.

12 **Sec. 17. Acceptance subject to referendum.** This Act must be
13 submitted to the legal voters within the district at an election
14 called for that purpose and held by December 31, 1991. The
15 election must be called, advertised and conducted according to
16 the law relating to municipal elections, provided that the
17 registrar of voters is not required to prepare or the clerk to
18 post a new list of voters and, for this purpose, the registrar of
19 voters shall be in session the 3 secular days preceding the
20 election, of which the first 2 days must be devoted to
21 registration of the voters and the last day to verification of
22 the lists and completion of the records of these sessions by the
23 registrar. The subject matter of this Act is reduced to the
24 following question:

26 "Shall the Winter Harbor Water District be created?"

28 The voters shall indicate by a cross () or check mark ()
30 placed against the words "Yes" or "No" their opinion of the same.

32 The results must be declared by the municipal officers of
33 the Town of Winter Harbor and the due certificate of the results
34 filed by the clerk with the Secretary of State.

36 This Act takes effect for all the purposes thereof
37 immediately upon its acceptance by a majority of the legal voters
38 within the district voting at the special election. Failure of
39 the approval by the necessary majority of voters at any such
40 election does not prevent a subsequent election or elections to
41 be held for that purpose.

44 STATEMENT OF FACT

46 This bill creates the Winter Harbor Water District.