

MAINE STATE LEGISLATURE

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M
R.S.

L.D. 1448.

DATE: 3/15/94

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M A J O R I T Y
STATE & LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1082, L.D. 1448, Bill, "An Act to Separate Peaks Island and Certain Other Islands in Casco Bay from the City of Portland"

Amend the bill by striking out the title and substituting the following:

'An Act to Allow Peaks Island and Certain Other Islands in Casco Bay to Vote in a Referendum to Secede from the City of Portland'

Further amend the bill by inserting after the title and before the emergency preamble the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. Separation and incorporation; Peaks Island. Subject to a referendum election as set forth in section 2 of this Part, the following territory now within the City of Portland and Cumberland County, together with the inhabitants of that territory, is hereby separated and set off from the City of

COMMITTEE AMENDMENT

R. G. S.

COMMITTEE AMENDMENT "A" to H.P. 1082, L.D. 1448

2 Portland and incorporated into a separate town by the name of the
Town of Peaks Island: Peaks Island, House Island, Pumpkin Knob,
4 Ram Island and Ram Island Ledge, and the surrounding waters,
referred to in this Act as "the Peaks Island territory." By
6 virtue of this separation, the Town of Peaks Island is also
removed from the jurisdiction of the Board of Harbor
8 Commissioners of the Port of Portland, but remains within
Cumberland County.

10 The boundaries of the Town of Peaks Island are described as
follows: All that part of Portland in Cumberland County in the
12 State of Maine beginning at a point in the waters of Hussey Sound
between Long Island, Peaks Island and Great Diamond Island
14 identified as 43° 40' 50" N by 70° 11' 00" W thence extending on
a heading of 148.5° T through 43° 39' 00" N by 70° 09' 30" W to
16 sea.

18 Beginning again at a point identified as 43° 40' 50" N by
70° 11' 00" W thence extending on a heading of 221° T to 43° 40'
20 00" N by 70° 12' 00" W thence extending on a heading of 215° T to
43° 39' 30" N by 70° 12' 30" W thence extending on a heading of
22 272° T to 43° 39' 30" N by 70° 13' 00" W thence on a heading of
186° T to 43° 38' 50" N by 70° 13' 05" W thence on a heading of
24 90° T to 43° 38' 50" N by 70° 11' 00" W thence on a heading of
255° T to 43° 37' 45" N by 70° 12' 00" W thence on a heading of
26 149° T through 43° 36' 30" N by 70° 10' 53" W to sea.

28 **Sec. A-2. Referendum election.** Part A of this Act takes effect
when approved for the purpose of permitting its submission to the
30 voters of Peaks Island at a special referendum election to be
held on November 2, 1994. Warrants must be issued for this
32 election notifying the qualified voters to vote on the approval
or rejection of this Part.

34 For the purposes of this referendum election, all persons
36 resident and legally registered to vote within the Peaks Island
territory are eligible to vote on the question with respect to
38 the separation of that territory from the City of Portland.

40 The city clerk of the City of Portland shall prepare the
required ballots on which the subject matter of this Act must be
42 reduced to the following question:

44 "Do you favor the separation of Peaks Island, House Island,
Pumpkin Knob, Ram Island and Ram Island Ledge and the
46 surrounding waters from the City of Portland and their
incorporation as a separate town?"

48 The voters shall indicate by a cross or check mark placed
50 against the word "Yes" or "No" their vote on this question.

2 The referendum election must be conducted by the city clerk
4 of the City of Portland, who shall declare the result of the
election. After the polls close and after a ballot inspection
6 and recount, if one is necessary, the city clerk's declaration of
the election results is final, subject to review by the Superior
8 Court for the County of Cumberland. The results of the
referendum election must be filed by the city clerk with the
Secretary of State.

10 **Sec. A-3. Effective date of separation.** If a majority of those
12 voting in the Peaks Island referendum election approve the
question, Part A of this Act takes effect with respect to that
14 territory and that territory is separated from the City of
Portland and is incorporated as the Town of Peaks Island on
16 September 1, 1995.

18 **Sec. A-4. Provision for first meeting.** If a majority of those
voting in the Peaks Island referendum election approve the
20 question, a justice of the peace or notary public may issue a
warrant to any legal voter in the Town of Peaks Island directing
22 that legal voter to notify the municipal inhabitants of a public
meeting to select municipal officers and to transact municipal
24 business, to be held at a time and place specified in the
warrant. Notice to the municipal inhabitants must be provided at
26 least 7 days prior to the meeting. Until August 31, 1995,
municipal officers or school board members selected at the
28 meeting are vested with all the powers and duties that other duly
elected municipal officers or school board members have,
30 including the power to raise, borrow and spend money.

32 **Sec. A-5. Form of government.** If a majority of those voting
in the Peaks Island referendum election approve the question, the
34 Town of Peaks Island must be incorporated and separated from the
City of Portland on September 1, 1995 and shall adopt the town
36 meeting as its form of government.

38 This Act does not prevent the Town of Peaks Island from
subsequently voting to change its form of government without the
40 necessity of a further act of the Legislature.

42 **Sec. A-6. Allocation of debts and assets.** If the Town of Peaks
Island is incorporated and is separated from the City of Portland
44 on September 1, 1995, the Town of Peaks Island shall assume its
just and due proportion of the debts of the City of Portland and
46 shall receive its just and due proportion of the assets of the
City of Portland. Any debt or any asset may be excluded upon
48 agreement of both parties.

2 **Sec. A-7. Sewage treatment services.** If the Peaks Island
territory is separated from the City of Portland and is
4 incorporated as the Town of Peaks Island, the Portland Water
District must provide wastewater and sewage services to the Town
6 of Peaks Island in accordance with the district's charter. The
allocation of financing, operating and maintenance costs and any
8 other costs related to wastewater and sewage collection,
interception and treatment under this paragraph must be
10 consistent with the Portland Water District Charter; except that
the arbitration panel may allocate or reallocate between the City
12 of Portland and the Town of Peaks Island any of the financing,
operating and maintenance costs and any other costs related to
14 wastewater and sewage collection in its total allocation of debts
and assets.

16 In relation to any bonded indebtedness and interest for the
described facilities on Peaks Island, if such debt and interest
18 is allocated to the Town of Peaks Island and if the town fails to
make necessary payments, the City of Portland shall pay the
20 principal and interest on any such bonds authorized and issued by
the Portland Water District prior to July 1, 1995. In such case,
22 the city has a cause of action against the Town of Peaks Island.

24 **Sec. A-8. Teachers.** If the Town of Peaks Island is
incorporated and is separated from the City of Portland, that
26 separation in no way affects the tenure rights existing on
November 2, 1993 of those school teachers within the Portland
28 School System who are employed at the Peaks Island school as of
November 2, 1994 and who elect to remain employed by the Portland
30 School System.

32 **Sec. A-9. Water rates.** If the Town of Peaks Island is
incorporated and is separated from the City of Portland, the
34 Portland Water District must provide water service to the Town of
Peaks Island in accordance with the district's charter, and may
36 charge rates in accordance with the provisions of the Maine
Revised Statutes, Title 35-A, chapter 61.

PART B

40 **Sec. B-1. Other duties and responsibilities.** Debts, assets and
42 property taxes for the period July 1, 1994 to June 30, 1995 must
be allocated between the City of Portland and the Town of Peaks
44 Island as set forth in Part A, section 6. The City of Portland
and the Town of Peaks Island shall allocate other duties and
46 responsibilities between themselves as they mutually determine to
be necessary and appropriate, and shall negotiate with each other
48 in good faith.

2 **Sec. B-2. Agreement binding; binding arbitration.** Negotiations
3 under section 1 of this Part must be completed by June 30, 1994,
4 subject to a mutually agreed upon extension. If the parties
5 reach agreement by that date, the agreement must be reduced to
6 writing and is final and binding on the City of Portland and the
7 Town of Peaks Island upon incorporation of the Town of Peaks
8 Island as of September 1, 1995 if the referendum question in Part
9 A, section 2 is approved.

10 If the parties do not reach agreement by June 30, 1994, the
11 parties shall submit any matters remaining in dispute to a panel
12 of arbitrators and shall reduce to writing all agreed-upon
13 matters. The panel of arbitrators consists of one arbitrator
14 selected by the City of Portland, one arbitrator selected by the
15 representatives of the Peaks Island Research Committee and one
16 neutral arbitrator selected jointly by the 2 other arbitrators.
17 Each party shall pay its chosen arbitrator and half of the cost
18 of the neutral arbitrator. Determination of disputed matters by
19 the panel of arbitrators is final and binding on the parties.
20 The arbitration must be administered under the auspices of the
21 American Arbitration Association and, except for the selection of
22 arbitrators, is governed by the commercial rules and procedures
23 of the American Arbitration Association, and the concept of "last
24 best offer" must be used. These issues must be resolved no later
25 than September 30, 1994 in the year of a referendum.

26 **Emergency clause.** In view of the emergency cited in the
27 preamble, this Act takes effect when approved.
28

30 32 **FISCAL NOTE**

34 This bill requires a local referendum to be held in City of
35 Portland. The additional costs of this state mandate are minor.
36 Pursuant to the mandate preamble, the 2/3 vote of all members
37 elected to each House exempts the State from the constitutional
38 requirement to fund 90% of the additional local costs.
39

40 **STATEMENT OF FACT**

42 The amendment replaces the original bill but still
43 authorizes the incorporation of the Town of Peaks Island if the
44 legal residents of Peaks Island, House Island and Pumpkin Knob in
45 Casco Bay approve, by referendum, separation from the City of
46 Portland and incorporation as a separate town. Part B of the
47 amendment clarifies the binding arbitration process.
48