

# MAINE STATE LEGISLATURE

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R08

L.D. 1696

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DATE: 3/15/94 (Filing No. H-841 )

**UTILITIES**

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

COMMITTEE AMENDMENT "A" to H.P. 1269, L.D. 1696, Bill, "An Act to Create the Seal Harbor Water District"

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

**'An Act to Create the Mount Desert Water District'**

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place 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.

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

**Whereas,** the residents of the Town of Mount Desert are in immediate need of forming a quasi-municipal entity to supply potable water; 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,

**COMMITTEE AMENDMENT**

R 45

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

4 **Sec. 1. Territorial limits; corporate name; purposes.** That part of  
6 the Town of Mount Desert in the County of Hancock that lies south  
8 of 44° 20' 33" north latitude and between the meridians of 68°  
10 13' 5" west longitude and 68° 18' 33" west longitude and north of  
12 the seaward line of the Town of Mount Desert and its inhabitants  
14 constitute a quasi-municipal corporation under the name of "Mount  
Desert Water District," referred to in this Act as the  
"district," for the purpose of supplying the town and the  
inhabitants and others of the district with potable water for  
domestic, sanitary, commercial, industrial, agricultural and  
municipal purposes.

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

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

36 Notwithstanding section 1 and other provisions of this  
38 section, the district may not provide service to any person or  
40 business within the territory served by the Northeast Harbor  
42 Water Company unless the district acquires, pursuant to section  
44 13 of this Act, the plants, properties, franchises, rights and  
46 privileges owned by the Northeast Harbor Water Company or unless  
48 the provision of service is approved by the Public Utilities  
50 Commission pursuant to the Maine Revised Statutes, Title 35-A,  
section 2102. Notwithstanding section 1 and other provisions of  
this section, the district may not provide service to any person  
or business within the territory served by the Seal Harbor Water  
Company unless the district acquires, pursuant to section 13 of  
this Act, the plants, properties, franchises, rights and  
privileges owned by the Seal Harbor Water Company or unless the  
provision of service is approved by the Public Utilities  
Commission pursuant to Title 35-A, section 2102.

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**Sec. 3. Authorized to lay mains, pipes, conduits and other water conveyances through public ways and across private lands.** The district may lay in, along, under and through the streets, roads, ways, highways, bridges, tidal waters, lakes, ponds, rivers and water courses in the Town of Mount Desert and across private lands in the Town of Mount Desert and maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures and appurtenances as may be necessary and convenient for its corporate purposes and, whenever the district lays any pipes, mains, conduits, aqueducts and fixtures or appurtenances 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.

**Sec. 4. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities.** The district, for the purposes of its incorporation, may erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes. The district may lay, construct and maintain its pipes and fixtures in, over and under navigable waters and build and maintain structures for the pipes and fixtures, subject to the laws of the United States. The district may supply water to any public utility now supplying water in Hancock County, subject to the consent of the Public Utilities Commission.

**Sec. 5. Procedure if public utility must be crossed.** In case of the crossing of any public utility, unless consent is given by the company owning and operating the public utility as to place, manner and conditions of the crossing within 30 days after consent is requested by the district, the Public Utilities Commission, upon petition by the district, shall determine the place, manner and conditions of the crossing, and all work on the property of the public utility must be done under the supervision and to the satisfaction of the public utility or as prescribed by the Public Utilities Commission, but at the expense of the district.

**Sec. 6. Authority to acquire property; rights of eminent domain.** The district, for the purposes of its incorporation, may take and hold, for public uses, real estate and personal estate and any interest in real estate and personal estate necessary or convenient for those purposes, by purchase, lease or otherwise and may exercise the right of eminent domain as provided in this Act, to acquire for those purposes any land or interest in land or water rights necessary for erecting and maintaining dams, plants and works, for flowage, power, pumping and supplying water through its mains; for reservoirs, preserving the purity of the

2 water and watershed; for laying and maintaining aqueducts and  
other structures; for taking, distributing, discharging and  
4 disposing of water; and for rights-of-way or roadways to its  
sources of supply, dams, power stations, reservoirs, mains,  
aqueducts, structures and lands.

6  
8 This section may not be construed as authorizing the  
district to take by right of eminent domain any of the property  
or facilities of any other public utility used, or acquired for  
10 future use by the owner of that property or those facilities, in  
the performance of a public duty, unless expressly authorized to  
12 do so by this section or by subsequent act of the Legislature or  
as provided in section 5 or 13.

14  
16 **Sec. 7. Procedure in exercising of eminent domain.** Except as  
specifically provided in section 13, the district may exercise  
18 the right of eminent domain granted under section 6 in accordance  
with this section. The district, in exercising, from time to  
20 time, any right of eminent domain in the taking of land,  
interests in the land or water rights, shall file in the office  
of the county commissioners of Hancock County and record in the  
22 Hancock County Registry of Deeds plans of the location of all  
such property to be taken, with an appropriate description and  
24 the names of the owners, if known. Notice of the filing must be  
sent by mail to the owners at the address appearing on the tax  
26 records of the municipality in which the land is located. When  
for any reason the district fails to acquire the property it is  
28 authorized to take, and which is described in that location, or  
if the location recorded is defective or uncertain, it may, at  
30 any time, correct and perfect that location and file a new  
description, and in such case the district is liable for damages  
32 only for property for which the owner had not previously been  
paid, to be assessed as of the time of the original taking, and  
34 the district is not liable for any acts that would have been  
justified if the original taking had been lawful. Entry may not  
36 be made on any private lands, except to make surveys, until the  
expiration of 10 days from that filing, at which time possession  
38 may be had of all lands, interests in the lands or water rights  
so taken, but title does not vest in the district until payment  
40 has been made.

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

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**Sec. 9. Trustees; how elected; first board; meeting; officers.** All of the affairs of the district must be managed by a board of trustees composed of 5 members, all of whom must be residents of the district and, after selection of the first board, nominated and elected in accordance with the laws relating to municipal elections, except as specifically provided in subsection 4.

**1. First board.** The municipal officers of the Town of Mount Desert shall appoint the first board of trustees. Two trustees serve for a term of one year, 2 trustees serve for a term of 2 years and one trustee serves for a term of 3 years. At the first meeting the initial trustees shall determine by agreement, or failing to agree they shall determine by lot, the term of office of each trustee. Vacancies are filled pursuant to subsection 4.

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

All decisions of the board of trustees must be by a majority of those present and voting. A quorum of the board of trustees is 3 trustees.

Trustees are entitled to compensation in accordance with Title 35-A, chapter 63.

**3. Bylaws.** The trustees may adopt and establish such bylaws as are necessary for the proper management of the affairs of the district.

**4. Vacancy.** Whenever the term of office of a trustee expires, the trustee's successor must be elected at large by a plurality vote by the inhabitants of the district. For the purpose of election, a special election must be called and held on the first Monday in May or on such other date in May as the trustees establish, the election to be called by the trustees of the district in the same manner as town meetings are called and for this purpose the trustees are vested with the powers of municipal officers of towns. The trustee so elected shall serve the full term of 3 years. If any vacancy arises in the membership of the board of trustees, it must be filled in like manner for the unexpired term by a special election to be called by the trustees of the district. When any trustee ceases to be a resident of the district, the trustee shall vacate the office of trustee and the vacancy must be filled as provided in this section. All trustees are eligible for reelection, but a person who is a municipal officer in the Town of Mount Desert is not eligible for nomination or election as trustee.

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

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

24           **Sec. 11. District and towns authorized to make and assume  
contracts.** The district, through its trustees, in order to carry  
26          out the objectives set forth in this Act, may contract with  
persons, districts, municipalities, utilities or corporations.  
28          The district may contract with the Town of Mount Desert and the  
town may contract with the district for the supply of water for  
30          municipal purposes.

32           **Sec. 12. Authorized to receive government aid; borrow money; issue  
bonds and notes.** For accomplishing the purposes of this Act, the  
34          district, through its trustees, without vote of the inhabitants,  
may receive state and federal aid or grants, borrow money  
36          temporarily and issue for the money its negotiable notes for the  
purpose of renewing and refunding the indebtedness so created,  
38          for paying any necessary expenses and liabilities incurred under  
this Act, including organizational and other necessary expenses  
40          and liabilities, whether incurred by the district or the Town of  
Mount Desert, the district being authorized to reimburse the Town  
42          of Mount Desert for any such expense incurred by the town and in  
acquiring properties, paying damages, laying pipes, mains,  
44          aqueducts and conduits, constructing, maintaining and operating a  
water plant or system and making renewals, additions, extensions  
46          and improvements to the water plant or system and to cover  
associated interest payments. The district, through its  
48          trustees, may also issue, from time to time, in accordance with  
the Maine Revised Statutes, Title 35-A, chapter 63, bonds, notes

2 or other evidences of indebtedness of the district in such amount  
3 or amounts, bearing interest at such rate or rates, selling at  
4 par or at a discount or a premium, to be sold in such manner, at  
5 public or private sale, and having such other terms and  
6 provisions as the trustees determine, except that loans running  
7 for one year or less do not require the approval of the Public  
8 Utilities Commission.

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10 Bonds, notes and evidences of indebtedness of the district  
11 may be issued to mature serially or made to run for a term of  
12 years as the trustees determine. Bonds, notes or evidences of  
13 indebtedness may be issued with or without provisions for calling  
14 the bonds, notes or evidences of indebtedness prior to maturity  
15 and, if callable, may be made callable at par or at such premium  
16 as the trustees determine. All bonds, notes or other evidences  
17 of indebtedness must have inscribed upon their face the words  
18 "Mount Desert Water District" and be signed by the treasurer and  
19 countersigned by the chair of the board of trustees of the  
20 district. If coupon bonds are issued, the interest coupon  
21 attached to the coupon bonds must bear the facsimile signature of  
22 the treasurer.

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24 All bonds, notes and evidences of indebtedness so issued by  
25 the district, which is declared to be a quasi-municipal  
26 corporation, are legal obligations of the district within the  
27 meaning of the Maine Revised Statutes, Title 30-A, section 5701.

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

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35 **Sec. 13. Authorized to acquire property and franchises of Northeast**  
36 **Harbor Water Company and Seal Harbor Water Company.** The  
37 district, through its trustees, may acquire by purchase all or  
38 part of the plants, properties, franchises, rights and privileges  
39 owned by the Northeast Harbor Water Company and the Seal Harbor  
40 Water Company located within the Town of Mount Desert, including  
41 all lands, waters, water rights, reservoirs, pipes, machinery,  
42 fixtures, hydrants, tools and all apparatus and appliances used  
43 or usable in supplying water in the area of the district. The  
44 district may acquire by the exercise of the right of eminent  
45 domain, a right expressly delegated to the district for that  
46 purpose, all or part of the plants, properties, franchises,  
47 rights and privileges except cash assets and accounts receivable,  
48 owned by the Northeast Harbor Water Company and the Seal Harbor  
49 Water Company, including all lands, waters, water rights, dam  
50 structures, reservoirs, pipes, machinery, fixtures, hydrants,



tools and all apparatus and appliances used or usable in  
supplying water in the area of the district, and if and when so  
acquired, the district, in addition to the powers conferred by  
this Act, may exercise all rights, privileges and franchises of  
the Northeast Harbor Water Company and of the Seal Harbor Water  
Company.

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

Any person aggrieved by the determination of the damages  
awarded to owners of property or interests therein under this  
section may, within 60 days after service of the condemnation  
order and check, appeal to the Superior Court of Hancock County.  
The court 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  
referees, and shall render judgment for just compensation, with  
interest when interest is due, and for costs in favor of the  
party entitled thereto. Appeal from the decision of the Superior  
Court may be had to the Law Court, as in other civil actions.

**Sec. 14. Rates.** The rates established pursuant to this  
section must be sufficient to provide revenue for the purposes of  
this Act and for all other purposes of the district, without the  
need for any financial assistance from the Town of Mount Desert,  
other than the normal payment of water charges for services  
rendered and the loan or loans for initial funds as set forth in  
section 12. Individuals, firms and corporations, whether  
private, public or municipal, shall pay to the treasurer or other  
designated officer of the district the rates established by the  
board of trustees for the water used by them. The rates must be  
established in accordance with the Maine Revised Statutes, Title  
35-A, chapter 61, to provide for the purposes set forth therein.

2           **Sec. 15. Existing laws not affected; rights conferred subject to**  
3 **provisions of law.** Nothing contained in this Act is intended to  
4 repeal, or may be construed as repealing, the whole or any part  
5 of any existing law, and all the rights and duties mentioned in  
6 this Act must be exercised and performed in accordance with all  
7 the applicable provisions of and amendatory acts to the Maine  
8 Revised Statutes, Title 35-A to the extent that that Title and  
its amendments affect the operations of the district.

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

16           **Sec. 17. Emergency clause; referendum; effective date.** In view of  
17 the emergency cited in the preamble, this Act takes effect when  
18 approved but only for the purposes of permitting its submission  
19 to the legal voters of the Town of Mount Desert at an election  
20 called for that purpose and held by December 31, 1994. The  
21 election must be called, advertised and conducted according to  
22 the law relating to municipal elections, except that the  
23 registrar of voters is not required to prepare or the clerk to  
24 post a new list of voters and, for this purpose, the registrar of  
25 voters must be in session the 3 secular days preceding the  
26 election, of which the first 2 days must be devoted to  
27 registration of the voters and the last day to verification of  
28 the list and completion of the records of these sessions by the  
29 registrar. The subject matter of this Act is reduced to the  
30 following question:

32                   "Do you favor creating the Mount Desert Water District?"

34           The voters shall indicate by a cross or check mark placed  
35 against the words "Yes" or "No" their opinion of the same.

38           The results must be declared by the municipal officers of  
39 the Town of Mount Desert and the due certificate of the results  
40 filed by the clerk with the Secretary of State.

42           This Act takes effect for all purposes immediately upon its  
43 acceptance by a majority of the legal voters of the Town of Mount  
44 Desert voting at the special election. Failure of the approval  
45 by the necessary majority of voters at any such election does not  
46 prevent a subsequent election or elections from being held for  
47 that purpose.

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**FISCAL NOTE**

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This bill requires the residents of the Town of Mount Desert to hold a public referendum by December 31, 1994 to decide on the creation of the Mount Desert Water District. The additional costs of this state mandate are likely to be relatively minor. Pursuant to the mandate preamble, the 2/3 vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional local costs.'

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**STATEMENT OF FACT**

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This amendment replaces the bill. The bill proposed to create the Seal Harbor Water District. This amendment creates the Mount Desert Water District. This amendment also amends the title to reflect the changes made to the bill.

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The district created under this amendment is designed to serve the purposes of the district proposed under the original bill. The territory of the district has been modified and various provisions of the charter modified for purposes of clarification.

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This amendment also adds a mandate preamble, an emergency preamble, an emergency referendum clause and a fiscal note to the bill.