

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

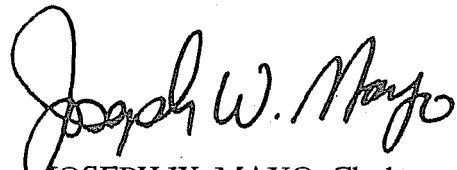
No. 1696

H.P. 1269

House of Representatives, January 11, 1994

An Act to Create the Seal Harbor Water District.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Utilities suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative ZIRNKILTON of Mount Desert.

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

2 **Sec. 1. Territorial limits; corporate name; purposes.** The
4 inhabitants and territory of the Town of Northeast Harbor and the
6 Town of Seal Harbor in the County of Hancock constitute a
8 quasi-municipal corporation under the name of "Seal Harbor Water
10 District" for the purpose of supplying the towns and the
inhabitants and others of the district with pure water for
domestic, sanitary, commercial, industrial, agricultural and
municipal purposes.

12 **Sec. 2. Powers of Seal Harbor Water District.** The Seal Harbor
14 Water District, for the purposes of its incorporation, may take,
16 collect, store, flow, use, divert, distribute and convey to the
18 district, or part of the district, water from any source approved
20 by the Department of Human Services, natural or artificial,
22 within the area of the Town of Northeast Harbor and the Town of
24 Seal Harbor and from any other source from which the Seal Harbor
26 Water Company may take water. It may also locate, construct and
maintain aqueducts, pipes, conduits, dams, wells, reservoirs,
standpipes, hydrants, pumping stations and other necessary
structures and equipment therefor, 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.

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

32 **Sec. 3. Authorized to lay mains, pipes, conduits and other water**
34 **conveyances through public ways and across private lands.** The district
36 may lay in and through the streets, roads, ways, highways and
38 bridges in the Town of Northeast Harbor and the Town of Seal
40 Harbor and across private lands in the Town of Northeast Harbor
42 and the Town of Seal Harbor and maintain, repair and replace all
44 such pipes, mains, conduits, aqueducts and fixtures and
46 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.

48 **Sec. 4. Authorized to erect dams and reservoirs; to cross navigable**
50 **waters; to supply water to utilities.** The district, for the purposes of
its incorporation, may erect and maintain all dams, reservoirs
and

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

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

23 This section may not be construed as authorizing the
24 district to take by right of eminent domain any of the property
25 or facilities of any other public utility used, or acquired for
26 future use, by the owner of that property or those facilities in
27 the performance of a public duty, unless expressly authorized to
28 do so by this section or by subsequent act of the Legislature or
29 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.** The district,
44 in exercising, from time to time, any right of eminent domain in
45 the taking of land, interests in the land or water rights, shall
46 file in the office of the county commissioners of Hancock County
47 and record in the Hancock County Registry of Deeds plans of the
48 location of all such property to be taken, with an appropriate
49 description and the names of the owners, if known. Notice of the
50 filing must be sent by mail to the owners at the address
51 appearing on the tax records of the municipality in which

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

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

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

32 **1. First board.** The municipal officers of the Town of
33 Northeast Harbor and the Town of Seal Harbor shall appoint the
34 first board of trustees. One trustee serves for a term of one
35 year, one trustee serves for a term of 2 years and one trustee
36 serves for a term of 3 years. At the first meeting the initial
37 trustees shall determine by agreement, or failing to agree they
38 shall determine by lot, the term of office of each trustee.
39 Vacancies are filled pursuant to subsection 4.

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

44 All decisions of the board of trustees must be by a majority of
45 those present and voting. A quorum of the board of trustees is 2
46 trustees.

48

Trustees are entitled to compensation in accordance with the
Maine Revised Statutes, 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 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 same
date as the annual municipal election, 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 Northeast Harbor or the Town of Seal Harbor is not eligible
for nomination or election as trustee.

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

The trustees shall appoint a registrar of voters for the
district, who may also be the registrar of voters for the Town of
Northeast Harbor or the Town of Seal Harbor, and fix the
registrar's salary. It is the registrar's duty to make and keep
a complete list of all the eligible voters of the district. The
list prepared by the registrar, as provided by the laws of the
State, governs the eligibility of any voter. In determining the
eligible voters of the district, the registrar of voters shall
exclude from that list and from all checklists the legal voters
who are resident outside the territorial limits of the district
as defined in this 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.

Sec. 10. Annual report. The trustees shall make and publish
an annual report, including a report of the treasurer. The
report may be included in and published as part of the annual
town reports of the Town of Northeast Harbor and the Town of Seal
Harbor.

2 **Sec. 11. District and towns authorized to make and assume**
3 **contracts.** The district, through its trustees, may contract with
4 persons and corporations, including the Town of Northeast Harbor
5 and the Town of Seal Harbor, and the towns may contract with the
6 district for the supply of water for municipal purposes.

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

34 The bonds, notes and evidences of indebtedness may be issued
35 to mature serially or made to run for such periods as the
36 trustees determine. Bonds, notes or evidences of indebtedness
37 may be issued with or without provisions for calling the bonds,
38 notes or evidences of indebtedness prior to maturity and, if
39 callable, may be made callable at par or at such premium as the
40 trustees determine. All bonds, notes or other evidences of
41 indebtedness must have inscribed upon their face the words "Seal
42 Harbor Water District," and be signed by the treasurer and
43 countersigned by the president of the board of trustees of the
44 district. If coupon bonds are issued, the interest coupon
45 attached to the coupon bonds must bear the facsimile signature of
46 the treasurer.

48

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

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

12
14 **Sec. 13. Authorized to acquire property and franchises of Seal
Harbor Water Company.** The district, through its trustees, may
16 acquire by purchase the entire plant, properties, franchises,
rights and privileges owned by the Seal Harbor Water Company
located within the Town of Seal Harbor, including all lands,
18 waters, water rights, reservoirs, pipes, machinery, fixtures,
hydrants, tools and all apparatus and appliances used or usable
20 in supplying water in the area of the district. The district may
acquire by the exercise of the right of eminent domain, a right
22 expressly delegated to the district for that purpose, the entire
plant, properties, franchises, rights and privileges except cash
24 assets and accounts receivable, owned by the Seal Harbor Water
Company, including all lands, waters, water rights, dam
26 structures, reservoirs, pipes, machinery, fixtures, hydrants,
tools and all apparatus and appliances used or usable in
28 supplying water in the area of the district, and if and when so
acquired, the district, in addition to the powers conferred by
30 this Act, has and is entitled to exercise all rights, privileges
and franchises of the Seal Harbor Water Company.

32
34 In exercising the right of eminent domain under this Act,
the trustees shall file with the district clerk a condemnation
36 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
38 amount of damages determined by the trustees to be just
compensation for the property or interest therein taken. The
40 trustees shall then serve upon the owner or owners of record a
copy of the condemnation order and a check in the amount of the
42 damages awarded and record a certified copy of the condemnation
order in the Hancock County Registry of Deeds. In the event of
44 multiple ownership, the check may be served on any one of the
owners. This title passes to the district upon service of the
46 order of condemnation and check or upon recordation in accordance
with this Act, whichever occurs first. Acceptance and
48 negotiation of the check do not bar an appeal under this Act.

2 Any person aggrieved by the determination of the damages
awarded to owners of property or interests therein under this Act
4 may, within 60 days after service of the condemnation order and
check, appeal to the Superior Court of Hancock County. The court
6 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
8 referees, and shall render judgment for just compensation, with
interest when such is due, and for costs in favor of the party
entitled thereto. Appeal from the decision of the Superior Court
10 may be had to the Law Court, as in other civil actions.

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

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

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

42 **Sec. 17. Acceptance subject to referendum.** This Act must be
submitted to the legal voters within the district at an election
44 called for that purpose and held by December 31, 1994. The
election must be called, advertised and conducted according to
46 the law relating to municipal elections, except that the
registrar of voters is not required to prepare or the clerk to
48 post a new list of voters and, for this purpose, the registrar of
voters must be in session the 3 secular days preceding the
50 election, of which the first

2 days must be devoted to registration of the voters and the last day to verification of the list and completion of the records of these sessions by the registrar. The subject matter of this Act is reduced to the following question:

"Do you favor creating the Seal Harbor Water District?"

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

The results must be declared by the municipal officers of the Town of Northeast Harbor and the Town of Seal Harbor and the due certificate of the results filed by the clerk with the Secretary of State.

This Act takes effect for all purposes immediately upon its acceptance by a majority of the legal voters within the district voting at the special election. Failure of the approval by the necessary majority of voters at any such election does not prevent a subsequent election or elections from being held for that purpose.

STATEMENT OF FACT

This bill creates the Seal Harbor Water District.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.