

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1165

H.P. 834

House of Representatives, April 4, 1995

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**An Act to Incorporate the Town of Biddeford Pool.**

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Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JOYCE of Biddeford.  
Cosponsored by Representatives: BUCK of Yarmouth, JOYNER of Hollis, MADORE of Augusta, WATERHOUSE of Bridgton, WINSOR of Norway.

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

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**PART A**

**Sec. A-1. Separation and incorporation; Biddeford Pool.** Subject to a referendum election as set forth in section 2 of this Part, the following territory now within the City of Biddeford and York County is hereby separated and set off from the City of Biddeford and incorporated into a separate town by the name of the Town of Biddeford Pool:

Bounded southerly by the following described line: Beginning at an iron rod to be set flush with the ground at the intersection of the apparent northeasterly sideline of Bridge Street with the apparent northwesterly sideline of Mile Stretch Road now located in the City of Biddeford, County of York, State of Maine; said corner marker shall be referred to as Corner A;

Thence running from Corner A easterly across Mile Stretch Road to the point of intersection of the northeasterly sideline of Beach Avenue with the southeasterly sideline of Mile Stretch Road;

Thence continuing southeasterly by and along the northeasterly sideline of Beach Avenue to the terminus of said Beach Avenue right of way;

Thence continuing southeasterly by a prolongation of the last described course of the northeasterly sideline of Beach Avenue, to the Atlantic Ocean, extending so far as the present boundary of the City of Biddeford extends or so far as State statute dictates.

Bounded westerly by the following described line: Beginning at Corner A as above described thence running northerly 10 feet, more or less, to a granite monument to be set; said granite monument shall be referred to as Corner B. The course of Line A-B shall be the same course as a straight line running from the set position of Corner A to the southeasterly most corner of the concrete seawall situated on land now or formerly owned by Edward L. Eisenstadt, said land being further described as 196 Hills Beach Road and as Lot No. 47 on the 1994 City of Biddeford Assessors Map No. 55, Corner B shall be set along this line. In the case where a future survey would find a differing position for the sideline intersection of Bridge Street with Mile Stretch Road, Corner A, the granite monument set, Corner B, and the original course A-B shall be held to Corner C.

Thence continuing from Corner B northerly by a prolongation of course A-B to the point where said prolonged course A-B

intersects to the centerline of the channel draining "Back Bay" so-called; said channel drains from northwest to southeast and is evident at low tide; said channel centerline shall be defined as the mid-point between both sides of the channel measured at low tide; said point of intersection shall be referred to as Corner C;

Thence cornering and running southeasterly from Corner C by the average centerline course of the above-described channel to a point in the centerline of said channel where the last described southeasterly course of said channel intersects an arc measured radially a distance of 600 feet northwesterly from Point D. Said Point D shall be a drill hole and marker set at or near the center of the southwesterly most "ice-breaker" located southerly of the "Gut" leading to Wood Island Harbor; said "ice-breaker" is further described as being the third of three large piles of granite tailings running from the northeast to the southwest off land of the Biddeford Pool Yacht Club situated southeasterly of the "Gut"; Point D shall be set in a flat slab of granite atop said ice-breaker near the center of said icebreaker, the exact point to be set by and at the discretion of a professional land surveyor commissioned by the Town of Biddeford Pool. The above-described point of intersection between Corner C and Point D shall referred to Corner E.

The centerline of the channel shall be defined and measured as the mid point between both sides of the channel at low tide. The average centerline course shall be determined by a professional land surveyor commissioned by the Town of Biddeford Pool as follows: Any deviation in the measured centerline of the channel in excess of 10 feet from a calculated average course shall require a deflection in the boundary line. A calculated course which does not deviate more than 10 feet from the measured centerline shall be considered average.

Thence cornering and running easterly from Corner E on a straight line to Corner F; Corner F shall be a point at or near the surface position of Nun Buoy No. 6 which is shown on the NOAA plan entitled "Saco Bay and Vicinity" dated January 4, 1986; the surface position of said Nun Buoy No. 6 shall be located by triangulation at high tide in calm seas by and at the discretion of a professional land surveyor commissioned by the Town of Biddeford Pool; upon affixing a reasonable point to the location of said Buoy, said point as fixed shall be held as Corner F regardless of further movement of said Buoy.

Thence cornering and running northeasterly from Corner F following the average centerline course of the "Gut" to Corner G. Corner G shall be defined as a point along the average centerline of the channel where the last described northeasterly

2 course of said centerline intersects an arc measured radially a  
4 distance of 600 feet northeasterly from the northerly most corner  
6 of the granite sea wall on land now or formerly of John Oddy  
8 situated along the southeasterly edge of the "Gut". The average  
10 centerline course of the "Gut" shall be established in the same  
12 manner as Line C-E above-described.

8 Thence cornering and running northwesterly from Corner G a  
10 distance of 2,400 feet to Corner H. The course of Line G-H shall  
12 be established as the course of a line running from Corner G  
14 through Corner H to the fixed position of Day-Marker "5B";  
16 Day-Marker "5B" is located approximately 1,850 feet northwesterly  
18 from the center of Basket Island as shown on the NOAA plan  
20 entitled "Saco Bay and Vicinity" dated January 4, 1986.

16 Thence cornering and running northeasterly from Corner H to a  
18 point along the present boundary line between the City of  
20 Biddeford and the City of Saco, said point shall be referred to  
22 as Corner I; the course of Line H-I shall be established as the  
24 course of a line running from Corner H to the fixed positions of  
26 Day-Marker "4A"; Day-Marker "4A" is located northeasterly of the  
28 easterly end of the submerged breakwater positioned along the  
30 southerly edge of the outlet channel of the Saco River into the  
32 Atlantic Ocean and is shown on the NOAA plan entitled "Saco Bay  
34 and Vicinity" dated January 4, 1986.

26 The westerly boundary as above described shall run from Corner A  
28 to Corner B to Corner C to Corner E to Corner F to Corner G to  
30 Corner H to Corner I.

30 The position of certain corner points and associated lines may be  
32 affected by forces of nature, present and future. The position  
34 of physical features associated with this description shall be  
36 located by a professional land surveyor during the course of the  
38 professional land surveyor's commission by the Town of Biddeford  
40 Pool. The position of said physical features as they exist  
42 during the course of said commission shall be accepted and held  
44 as the intent of this description. Upon completion of the  
46 commissioned survey and the recording of said survey plan at the  
48 York County Registry of Deeds, the position of the Corner Points  
50 and Town Boundaries established by said survey shall be held  
regardless of future action by natural forces upon said physical  
features.

44 Bounded northerly by the following described line: Beginning at  
46 Corner I thence running easterly by and along the boundary line  
48 of the City of Saco and extending so far easterly as the boundary  
of the City of Biddeford presently extends or so far as state  
statute dictates.

2 Bounded easterly by the following described line: Beginning at  
the easterly end point of the above described northerly boundary  
4 line thence running southerly to the easterly end point of the  
first described southerly boundary line, extending so far  
6 easterly as the boundary of the City of Biddeford presently  
extends or as far as state statute dictates.

8 Permanent Markers shall be set at Corner B and Point D  
above-described.

10 Any future retracement survey of the town boundaries herein  
12 described shall hold to the set positions of Corner B and Point D.

14 Meaning and intending to include within this description all of  
the peninsula known as Fletcher's Neck and Biddeford Pool  
16 including the land along the so-called Mile Stretch, the Town  
thatch bed, Stage Island, Negro Island, Wood Island, Gooseberry  
18 Island, Beach Island, and all other islands within this described  
area and surrounding waters, which territory is referred to as  
20 "Biddeford Pool." Notwithstanding this separation, the Town of  
Biddeford Pool remains within York County.

22 **Sec. A-2. Referendum election.** Part A of this Act takes effect  
24 90 days after approval for the purpose of permitting its  
submission to the voters of Biddeford Pool at a special  
26 referendum election to be held at a suitable location in  
Biddeford Pool on Tuesday, January 8, 1996, on the question of  
28 the separation of that territory from the City of Biddeford.  
Warrants must be issued for this election notifying the qualified  
30 voters to vote on the approval or rejection of this Part.

32 For the purposes of this referendum election, all persons  
legally registered or eligible to register to vote within  
34 Biddeford Pool are eligible to vote.

36 The city clerk of the City of Biddeford shall prepare the  
required warrant and ballots on which the subject matter of this  
38 Part must be reduced to the following question:

40 "Do you favor the separation of Biddeford Pool, Stage  
Island, Wood Island, Beach Island, Negro Island, Gooseberry  
42 Island and other adjacent islands and the surrounding waters  
from the City of Biddeford and their incorporation as a  
44 separate town?"

46 The voters shall indicate their vote on this question by  
answering "Yes" or "No" as provided in the ballot.

48 The referendum election must be conducted by the city clerk  
50 of the City of Biddeford, who shall declare the result of the

2 election. The city clerk's declaration of the election results  
3 is final, subject to review by the Superior Court for the County  
4 of York. The results of the referendum election must be filed by  
5 the clerk with the Secretary of State.

6 **Sec. A-3. Effective date of separation: form of government.** If a  
7 majority of those voting in the Biddeford Pool referendum  
8 election approve the question, Part A of this Act takes effect  
9 with respect to that territory and that territory is separated  
10 from the City of Biddeford and is incorporated as the Town of  
11 Biddeford Pool on July 1, 1996 and shall adopt the town meeting  
12 as its form of government. Nothing in this Act prevents the Town  
13 of Biddeford Pool from subsequently voting to change its form of  
14 government without the necessity of a further act of the  
15 Legislature.

16 **Sec. A-4. Allocation of debts and assets.** If the Town of  
17 Biddeford Pool is incorporated and is separate from the City of  
18 Biddeford on July 1, 1996, the Town of Biddeford Pool shall  
19 assume its just and due proportion of the debts of the City of  
20 Biddeford and shall receive its just and due proportion of the  
21 assets of the City of Biddeford determined as follows.

22  
23 The debts of the City of Biddeford to be allocated are  
24 specified in subsection 1. The assets of the City of Biddeford  
25 to be allocated are specified in subsections 2 and 3. The just  
26 and due proportion of debts and assets is specified in subsection  
27 4. The method and terms of payment are specified in subsection  
28 5.

29 **1. City of Biddeford debts.** The debts of the City of  
30 Biddeford are limited to the general bonded indebtedness of the  
31 City issued and outstanding, comprising general obligation bonds,  
32 notes and capital leases, as reported in accordance with  
33 generally accepted accounting principles in the city's audited  
34 general purpose financial statements on June 30, 1995.

35 **2. Real property and tangible personal property of the City  
36 of Biddeford at Biddeford Pool.** All real property owned by the  
37 City of Biddeford on June 30, 1996 that is located within  
38 Biddeford Pool and all tangible personal property customarily  
39 located within Biddeford Pool become the property of the Town of  
40 Biddeford Pool as a matter of law without further action or  
41 documentation, but the City of Biddeford shall promptly deliver  
42 to the Town of Biddeford Pool appropriate confirmatory quit claim  
43 deeds for all such real property and appropriate confirmatory  
44 quit claim bills of sale for all such tangible personal  
45 property. The residents of the city retain the right to use the  
46 public beach and beach parking area at Biddeford Pool upon the  
47 same terms, conditions and fees as the residents of the Town of  
48 Biddeford Pool.  
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2           **3. Other assets of the City of Biddeford.** All other city  
3 assets are the amount of the unreserved fund balance of the  
4 General Fund of the City of Biddeford as reported in accordance  
5 with generally accepted accounting principles in the city's  
6 audited general purpose financial statements as of June 30, 1995.

8           **4. Just and due proportion of debts and assets.** The just  
9 and due proportion of the debts and other assets of the City of  
10 Biddeford determined in subsections 1 and 3 are allocated to the  
11 Town of Biddeford Pool based on the ratio of the state valuation  
12 on April 1, 1996 of taxable properties within the Town of  
13 Biddeford Pool to the state valuation on April 1, 1996 of taxable  
14 properties of the City of Biddeford including the Town of  
15 Biddeford Pool, referred to in this section as the allocation  
16 ratio.

18           **5. Method and terms of payment.** Upon incorporation the  
19 City of Biddeford shall provide the Town of Biddeford Pool with a  
20 schedule of debt service payment requirements for the debts of  
21 the City of Biddeford determined in subsection 1. Unless  
22 alternative terms for payment are agreed upon by the parties in  
23 writing, the Town of Biddeford Pool shall pay the City of  
24 Biddeford the debt service payment requirements multiplied by the  
25 allocation ratio no later than 10 working days prior to the due  
26 date for such payments. Unless otherwise agreed, the City of  
27 Biddeford shall pay to the Town of Biddeford Pool the just and  
28 due proportion of other assets as determined in subsection 4  
29 within 10 working days from the date of incorporation of the Town  
30 of Biddeford Pool.

32           **Sec. A-5. Intermunicipal agreements.** To the extent the City of  
33 Biddeford or the Town of Biddeford Pool enters into mutual aid  
34 compacts, agreements with respect to the education of students or  
35 the use of the public schools, and other intermunicipal  
36 agreements with other cities and towns, each shall offer to the  
37 other the opportunity to enter into the same compacts and  
38 agreements on the same terms as the other cities and towns.

40           **Sec. A-6. Property taxes.** Until the effective date of  
41 separation, Biddeford Pool remains a part of the City of  
42 Biddeford for all purposes and the City of Biddeford shall  
43 maintain its level of customary municipal services to Biddeford  
44 Pool. Unabated property taxes levied but uncollected for fiscal  
45 years beginning prior to the effective date of separation are  
46 transferred as a matter of law to the Town of Biddeford Pool and  
47 are not an asset of the City of Biddeford for the purposes of  
48 this Act.



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**PART B**

**Sec. B-1. Other duties and responsibilities.** In anticipation of the approval of the voters of the referendum election established in Part A, section 2, the City of Biddeford and representatives of the territory constituting the future Town of Biddeford Pool shall meet to negotiate in good faith the issues arising from the creation of the Town of Biddeford Pool, including the allocation of debts and assets as required in Part A, section 4, the terms of any intermunicipal agreements including those for schools, police and fire fighting services and any other matters required to be determined prior to the establishment of the town.

**Sec. B-2. Agreement binding; binding arbitration.** Negotiations under section 1 of this Part must be completed by October 30, 1995. If the parties reach agreement by that date, the agreement must be reduced to writing and is final and binding on the City of Biddeford and the Town of Biddeford Pool upon incorporation of the Town of Biddeford Pool as of July 1, 1996 if the referendum question in Part A, section 2 is approved.

If the parties do not reach an agreement by October 30, 1995, the parties shall submit any matters remaining in dispute to a panel of arbitrators and shall reduce to writing all agreed-upon matters. The panel of arbitrators consists of one arbitrator selected by the City of Biddeford, one arbitrator selected by the representatives of Biddeford Pool and one neutral arbitrator selected jointly by the 2 other arbitrators. Determination of disputed matters by the panel of arbitrators must be rendered on or before November 29, 1995, and is final and binding on the parties. The arbitration must be administered under the auspices of the American Arbitration Association and, except for the selection of arbitrators, is governed by the rules and procedures of the American Arbitration Association. The arbitrators may award costs of arbitration in whole or in part, including reasonable attorney's fees, to either side if in the sole discretion of the arbitrators the other side has been unreasonable. Each party is responsible for its own costs of arbitration. This provision may be specifically enforced by a justice of the Superior Court.

**Sec. B-3. Transition.** If a majority of those voting in the Biddeford Pool referendum election approve the question, there will be a transition period from the date on which the city clerk announces the results of the referendum until July 1, 1996. During the transition period, the following special procedures and powers are in effect.

1. A justice of the peace or notary public may issue a warrant to any legal voter in the territory comprising the future Town of Biddeford Pool directing the legal voter to notify the municipal inhabitants of the territory of a public meeting to select municipal officers of the Town of Biddeford Pool and to transact municipal business on July 1, 1996, the meeting to be held at a time and place specified in the warrant. Notice to the municipal inhabitants must be provided at least 30 days prior to the meeting, which meeting begins no later than February 15, 1996.

2. The municipal officers elected by the inhabitants at the meeting held pursuant to subsection 1, together with the inhabitants acting in town meeting where required and appropriate, have all the powers necessary to establish the Town of Biddeford Pool on July 1, 1996, other than the power to raise money, including the power to adopt a budget, to enact ordinances for the administration of the town and for the regulation of matters within its jurisdiction and to enter into contracts effective July 1, 1996, for the use of real estate for the town's business, for the purchase of goods and services, for the hiring of necessary personnel and for other lawful purposes necessary in the judgment of the town. Notwithstanding this subsection, the municipal officers have the power during the transition period to borrow money and to accept voluntary advance payments of future taxes in order to pay for the costs of immediately necessary expenses as determined by the municipal officers but only for expenses necessary to prepare for the administration of the Town of Biddeford Pool on July 1, 1996.

3. Although the municipal officers have no power to raise money before July 1, 1996, any contracts entered into by them prior to that date pursuant to this Act are otherwise binding and enforceable on the Town of Biddeford Pool.

4. The City of Biddeford shall cooperate during the transition period to provide records and information as may be required by the town officers to establish the effective administration of the town and the authorized municipal officials of the City of Biddeford shall commence the negotiations contemplated by this Act no later than the effective date of this Act.

#### STATEMENT OF FACT

Part A of this bill authorizes the incorporation of the Town of Biddeford Pool if the legal residents of Biddeford Pool approve, by referendum, separation from the City of Biddeford and incorporation as a separate town.

2           Part B of this bill requires the parties to negotiate  
3 matters of duties and responsibilities in advance of a vote  
4 approving the question presented at the referendum election. If  
5 the parties fail to agree in a timely fashion, the matters are  
6 subject to binding arbitration.