

MAINE STATE LEGISLATURE

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L.D. 1285

DATE: 6/15/95

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STATE AND LOCAL GOVERNMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 909, L.D. 1285, Bill, "An Act to Clarify and Expand the Powers and Duties of Lake Arrowhead Community, Incorporated, and to Change Its Name to Lake Arrowhead Community Municipal Services Corporation"

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

'An Act to Clarify and Expand the Powers and Duties of Lake Arrowhead Community, Incorporated'

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

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

Whereas, Lake Arrowhead Community, Inc., the property owners' association providing common services to residents of Lake Arrowhead Community, formerly known as Lake Arrowhead Estates, in the Town of Waterboro and the Town of Limerick, is in serious financial difficulty and may no longer be able to provide such services; and

Whereas, the municipalities of Limerick and Waterboro are also unable to provide these services; and

Whereas, the residents of Lake Arrowhead Community are unable to finance these services on a voluntary basis; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of

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2 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
4 safety; now, therefore,

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

8 **Sec. 1. Corporation confirmed.** Lake Arrowhead Community,
Inc., incorporated October 17, 1975, is confirmed as a Maine
10 nonprofit corporation.

12 **Sec. 2. Territory of Lake Arrowhead Community, Inc. defined.** The
territory of the Town of Limerick and the Town of Waterboro in
14 the County of York, as is bounded and described as follows: that
real estate shown on plans of Lake Arrowhead Estates recorded in
16 the York County Registry of Deeds in Book 50, Page 12, index 1 on
December 30, 1969; Book 62, Page 2, recorded in the registry on
18 February 13, 1973; Book 61, Page 41, recorded in the registry on
February 13, 1973; Book 61, Page 27, recorded in the registry on
20 January 18, 1973; Book 65, Page 25, recorded in the registry on
January 18, 1973; Book 57, Page 33, recorded in the registry on
22 June 23, 1972; Book 63, Page 1, recorded in the registry on
February 13, 1973; Book 52, Page 48, recorded in the registry on
24 November 5, 1970; Book 62, Page 32, recorded in the registry on
February 13, 1973; and Book 54, Page 23, recorded in the registry
26 on June 11, 1972; and real estate described in a certain deed
recorded in Book 2641, Page 279, in the registry on March 30,
1980; together with the inhabitants of that territory and the
28 owners of real estate in that territory, is confirmed as a body
politic and corporate by the name of Lake Arrowhead Community,
30 Inc., referred to in this Act as the "corporation."

32 **Sec. 3. General powers of corporation.** The corporation has the
power, within its territory, to construct, maintain and repair
34 roads, streets, ways and sidewalks; to maintain, improve and
expand the water system, to provide or procure sewer and refuse
36 disposal facilities and to contract with others to provide power
and light services; to provide security and fire protection; to
38 build, repair and maintain docks, boat ramps, wharves, landings,
the corporation's buildings, tennis courts and swimming pools; to
40 purchase, construct, maintain and repair such buildings and
equipment as may be necessary or desirable; and to adopt budgets,
42 establish membership fees, make membership fee assessments and
borrow money necessary to effectuate the purposes described in
44 this section. The corporation has the powers granted to
condominium unit owners' associations by the Maine Revised
46 Statutes, Title 33, section 1603-102.

48 **Sec. 4. Officers; duties and powers.** The officers of the
corporation must be members of the corporation and consist of 9

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trustees, a treasurer and a clerk and such other officers as may be provided for in the bylaws of the corporation. A trustee may also serve as the clerk or treasurer. The trustees shall appoint the clerk, the treasurer and any other officers for one-year terms. The clerk of the corporation shall provide the clerk's current mailing address to the Secretary of State by June 30th of each year. The treasurer of the corporation shall give a bond to the corporation in such a sum as the trustees may direct, and the bond must be approved by the trustees and recorded by the clerk. Trustees serve without compensation and must be sworn by the clerk or any person authorized by law to administer oaths of office.

The directors of Lake Arrowhead Community, Inc., shall, within 60 days of the effective date of this Act, select the initial trustees according to the following: three to serve terms of one year or until the first annual meeting of the corporation, whichever comes first; 3 to serve terms of 2 years or until the 2nd annual meeting of the corporation, whichever comes first; and 3 to serve terms of 3 years or until the 3rd annual meeting of the corporation, whichever comes first. The members of the corporation shall, at the annual meeting of the corporation, fill any vacancy created by the expiration of a trustee's term of office by electing trustees for a term of 3 years. A vacancy in the office of trustee occurring during a trustee's term of office must be filled for the remainder of the unexpired term by vote of the remaining trustees. One trustee, chosen by vote of all trustees, serves as chair of all meetings of the trustees and of the corporation. Between the time of the effective date of this Act and the time the directors select the initial trustees, the directors shall serve as trustees in accordance with this Act. In selecting the initial trustees, the directors may choose among themselves.

The trustees have all powers necessary to conduct the corporation's business and execute its rights and responsibilities, including the adoption of an annual budget and, as may be necessary, supplemental budgets, adequate for the corporation to carry out its rights and obligations; to determine the amount of money to be raised through membership fees in accordance with sections 9 and 10 of this Act; and to adopt rules and regulations consistent with the bylaws of the corporation and any votes of the corporation on any matter.

The trustees shall, at least annually, cause an audit of the corporation's financial affairs to be made.

Sec. 5. Bylaws. The corporation may adopt and amend bylaws, consistent with the laws of this State and the Constitution of Maine and applicable ordinances and regulations

of the Town of Limerick and the Town of Waterboro, necessary for the regulation of the affairs of the corporation.

Sec. 6. Meetings of the corporation; members. The annual meeting of the corporation must be held on the first Saturday in August of each year. Notice of annual meetings and any special meetings must be made by the trustees by a warrant that states the time, date, place and subject matters to be considered at the meeting and that warrant must be posted in 2 conspicuous public places within the corporate limits of the corporation 7 days prior to the meeting.

In addition, a copy of the warrant must be mailed by first class mail, postage prepaid, to each member as shown on the clerk's list of members at the member's last known address at least 30 days before the annual meeting or any special meeting. Failure of a member to receive notice does not affect the validity of any action taken at a meeting.

A list of the members must be prepared by the clerk and posted by the trustees at the place of the annual meeting and any special meeting.

Every person 18 years of age or older who is the owner of a lot of record within the territory of the corporation as shown on the tax assessment records of the Town of Limerick and the Town of Waterboro is a member of the corporation and subject to its charter, bylaws, rules and regulations and a member having the right to vote at meetings of the corporation. If a lot is owned by 2 or more persons, only one may be considered a member for the purpose of voting and those persons may agree in a written notice filed with the trustees which one of the owners is to be the voter at a meeting of the corporation. In the absence of such an agreement, the clerk shall decide which person may vote. Regardless of the number of lots owned by a member, no member has more than one vote.

Special meetings of the corporation may be held at the call of the chair of the trustees or of a majority of the trustees.

The trustees of the corporation shall determine the persons who are entitled to vote at any meeting and shall direct the clerk to prepare the list of all members at least 7 days prior to every meeting. A vote may be by voice or by a show of hands, except that a vote upon any proposition at any meeting must be taken and checked against the voting list upon the demand of 7 members.

At all meetings of the corporation a quorum consists of 50 members. Members voting by absentee ballot must be counted

2 toward the quorum requirement. Except as otherwise provided, all
3 propositions adopted by the corporation must be by a majority of
4 those voting in person or by absentee ballot.

6 **Sec. 7. Power to raise money; debt.** The corporation through its
7 trustees is authorized and vested with the power to exercise the
8 powers described in section 3 of this Act; to purchase,
9 construct, maintain and repair buildings and equipment as may be
10 necessary or desirable; to acquire by purchase, gift or grant and
11 by deed, will, lease or otherwise, title to real estate and
12 tangible and intangible personal property for the benefit of the
13 corporation; to manage, operate, mortgage, sell, lease and
14 exchange real estate and personal property for the benefit of the
15 corporation; to employ or otherwise contract with any individual,
16 firm, association or corporation to accomplish the purposes
17 described in this section; and to pay the salaries and expenses
18 of the corporation.

20 For the sole purpose of being eligible to purchase surplus
21 property and to apply for grants and loans the corporation is
22 deemed to be a municipality.

24 The corporation is further authorized and vested with the
25 power to authorize the borrowing of money and the issuing of
26 bonds, notes or other evidences of indebtedness in such amounts
27 as the members of the corporation determine necessary for the
28 purposes set forth in this section. The trustees of the
29 corporation may determine the rates of interest and the terms and
30 conditions of any such indebtedness. Notwithstanding any other
31 provision of this Act or any other provision of law, the total
32 outstanding indebtedness of the corporation may not exceed the
33 sum of \$100,000, except to the extent the corporation authorizes
34 the trustees to exceed that limit by a vote of 2/3 of the members
35 voting in person or by absentee ballot at any meeting.

36 **Sec. 8. Reserve fund.** The corporation may establish a reserve
37 fund not to exceed \$500,000, except to the extent the corporation
38 authorizes the trustees to exceed that limit by a vote of 2/3 of
39 the members voting in person or by absentee ballot at any meeting.

42 **Sec. 9. Membership fee levied.** For all purposes of assessment
43 of fees under this Act, the person or persons shown on tax
44 assessment records of the Town of Limerick and the Town of
45 Waterboro as being the owner of any lot of land within the limits
46 of the corporation is deemed the owner.

48 Regular membership fees and surcharges and supplemental
membership fees and surcharges as may be necessary must be
established each year by the trustees so that the total fees

assessed are adequate to fund the corporation's expenses, including the payment of debt, contribution to the reserve fund and the establishment of a reasonable surplus. The corporation by a vote of its members shall establish the structure and formula by which the trustees may calculate the amount of the membership fee to be assessed to any member or members of the corporation. The corporation shall provide for a fair and reasonable structure and formula for fee assessment and establish classes of fee assessment and may make a distinction between lots that are developed and those that are not developed. The membership fee for each class must be assessed in the same amount for each person in that class.

All money that is raised by the corporation at its annual or special meeting for purposes for which the corporation may lawfully raise money and all money that the trustees vote to raise at their meetings, except any rates or charges fixed by the trustees for the use of water, sewer or refuse disposal facilities, must be assessed by regular or special assessment upon the buildings and lands within the corporation's territory by the clerk of the corporation in the same manner as is provided by law for the assessment of town and county taxes.

In addition to the assessment provided in this section, the trustees may fix rates or charges that are reasonable and expedient based on the use of water, sewer or refuse disposal facilities. The rates or charges for use of water, sewer or refuse disposal facilities are payable by the person shown on the tax assessment records of the Town of Limerick and the Town of Waterboro as being the owner of the lot benefiting from those facilities. Any charges not paid are considered assessments under all of the provisions of this section and section 10 of this Act and must be collected pursuant to the provisions of section 10 of this Act.

Sec. 10. Membership fee assessment and collection. After a certificate is filed by the trustee with the clerk of the corporation of the amount of money voted to be raised at any meeting of the trustees or any meeting of the corporation, the clerk shall, within 30 days of the filing of the trustees' certificate, assess membership fees upon the buildings and lands within the corporation's territory and certify and deliver the lists of the membership fee assessments to the treasurer. The treasurer shall collect the membership fee assessments. The treasurer shall receive all money belonging to the corporation, keep a regular account of all money received and paid out and exhibit the account to the trustees and the members whenever requested to do so.

The corporation has the same power of collecting membership fee assessments that a condominium unit owners' association has.

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2 The corporation has the same right to recover by suit membership
3 fees assessed under this Act as a condominium unit owners'
4 association has pursuant to the Maine Revised Statutes, Title 33,
5 section 1603-116, as amended from time to time. The trustees
6 have the power to waive any membership fee assessment for good
7 cause shown.

8 The rights and powers of the corporation and its treasurer
9 to collect membership fee assessments and any liens are at all
10 times subordinate to the rights and powers, assessments, liens or
11 attachments of the Town of Limerick and the Town of Waterboro in
12 the collection of their respective taxes, assessments or other
13 lawful charges. The rights and powers of the corporation and its
14 treasurer to collect membership fee assessments and liens are
15 also subordinate to the rights of any mortgagees, judgment
16 creditors and other lienholders on land or buildings within the
17 corporation's territory that are existing and recorded in the
18 York County Registry of Deeds at the time of the effective date
19 of this Act.

20 **Sec. 11. Property of corporation not tax exempt.** Property of the
21 corporation or its members is not exempt from taxation by reason
22 of this Act or the laws of this State.

23 **Sec. 12. Records and proceedings of the corporation.** The records
24 and other documents of the corporation must be available to all
25 members of the corporation and the meetings of the trustees must
26 be open to attendance by all members of the corporation. The
27 trustees may meet in executive session to discuss pending or
28 threatened litigation and personnel matters. Documents relating
29 to pending or threatened litigation or the personnel file of an
30 employee are not available to any person except the trustees and
31 officers of the corporation and, in the case of a personnel file,
32 the employee to whom the file refers.

33 **Sec. 13. Membership fee assessments.** The provisions of this
34 Act governing membership fee assessments by the corporation apply
35 to all members. They replace any existing provisions for
36 assessments. However, any assessments or other charges owed
37 before the effective date of this Act remain valid debts and are
38 enforceable pursuant to the provisions of this Act. For the
39 purposes of this section, assessments or other charges are
40 considered owed if and to the extent that at the time of
41 assessment a member's deed contained provision for the assessment
42 or was subject to a condition for the assessment and the
43 corporation has not in writing waived application of the
44 provision or condition.

45 **Sec. 14. Inconsistent provisions of existing articles and bylaws.** The
46 provisions of any existing articles of incorporation,
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bylaws or rules and regulations and the provisions of any contracts, deeds or covenants of Lake Arrowhead Community, Inc., that are inconsistent with the provisions of this Act are abrogated to the extent of that inconsistency.

Sec. 15. Acceptance of provisions. Before the provisions of this Act may be implemented by the corporation, the Act must be accepted by a majority of the members voting in person or by absentee ballot at an annual or special meeting of the corporation. Except as provided in this section, notice and conduct of the meeting must be as provided in this Act and the corporation's bylaws. Written notice of the meeting must include a copy of this Act and an absentee ballot, with a return envelope addressed to the president of the corporation, containing a statement to be signed by an absentee voter verifying that the absentee voter has cast a vote. The corporation must bear any costs related to the meeting. If a special meeting is called to approve the provisions of this Act, that meeting must be called by the current directors of the corporation. The ballot question must be:

'Do you favor acceptance of 'An Act to Clarify and Expand the Powers and Duties of Lake Arrowhead Community, Incorporated,' as passed by the First Regular Session of the 117th Legislature?'

If a majority of all the voters voting at the meeting or by absentee ballot votes in favor of accepting the Act, then it takes effect upon filing of a certification of the results by the president of the corporation with the Secretary of State. The provisions of this Act may be submitted to the members for approval under this section no more than once in any calendar year. Approval under this section must be attained before September 1, 1996.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved for the purpose of calling a meeting of Lake Arrowhead Community, Inc., for voting upon the acceptance of this Act. If this Act is accepted by a majority of the members voting at a legal meeting called for that purpose, then the Act takes effect in its entirety upon filing of the certification of the results of the voting with the Secretary of State.'

STATEMENT OF FACT

This amendment replaces the bill. It clarifies the status of Lake Arrowhead Community, Incorporated, a property owners' association in the development formerly known as Lake Arrowhead

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Estates, in the Town of Limerick and the Town of Waterboro in York County.

Like the bill, the amendment clarifies and expands the powers of the property owners' association by making it clear that all owners are members of the association and liable to pay their share of the association's expenses, establishes a method for governance and provides the ability for the association to collect unpaid membership fees. The amendment makes several technical changes in the bill, clarifies the validity of existing membership dues and adds a requirement that the provisions of the Act be approved by a vote of the members of the property owners' association.

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