

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1565

H.P. 1121

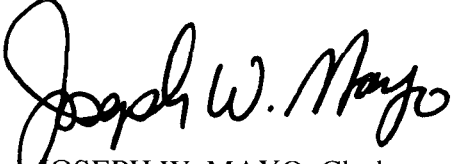
House of Representatives, June 8, 1995

An Act to Create the Prospect Water Authority.

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Utilities and Energy suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative WHITCOMB of Waldo.
Cosponsored by Representative: TUFTS of Stockton Springs.

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

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

12 **Whereas,** the inhabitants of the Town of Prospect are in
13 immediate need of forming a water authority to protect the
14 surface water and groundwater resources in the town; and

15 **Whereas,** in the judgment of the Legislature, these facts
16 create an emergency within the meaning of the Constitution of
17 Maine and require the following legislation as immediately
18 necessary for the preservation of the public peace, health and
19 safety; now, therefore,

20
21 **Be it enacted by the People of the State of Maine as follows:**

22
23 **Sec. 1. Territorial limits; corporate name; purposes.** The territory
24 and inhabitants of the Town of Prospect constitute a body
25 corporate and politic under the name of "Prospect Water
26 Authority," referred to in this Act as the "authority," for the
27 purpose of protecting, improving and conserving the use of the
28 surface water and groundwater resources within and under the
29 territory of the authority in order to preserve and enhance the
30 quality and quantity of those waters for the public health and
31 welfare and for the benefit of the residents and property in the
32 territory of the authority.

33
34 **Sec. 2. Powers of authority.** The authority, for the purposes of
35 its incorporation, may take, collect, store, flow, use, divert,
36 distribute and convey water from any natural source, within or
37 under the territory of the authority; may locate, construct and
38 maintain aqueducts, pipes, conduits, dams, wells, reservoirs,
39 standpipes, hydrants, pumping stations and other necessary
40 structures and equipment for those purposes; may do anything
41 necessary to furnish water for public purposes and for the public
42 health, comfort and convenience of the inhabitants and others in
43 the territory of the authority; may furnish water to public water
44 systems and others located outside the territory of the
45 authority; and may contract to do all of the foregoing. Any use
46 or regulation of groundwaters by the authority must not interfere
47 with the district's use of the existing production wells, within
48 the limits of the safe yield of the wells as
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2 established by a safe-yield committee in which the district and
the Town of Prospect participate. The authority is not obligated
4 to supply water except as it undertakes or contracts to do so and
the authority may, in its discretion, undertake or contract to
6 supply water to certain entities or a single entity, including
the Searsport Water District.

8 The authority may acquire by purchase or donation any real
estate or personal estate, or interest in real estate, or
10 personal estate for the purposes of its incorporation, including
the protection, improvement and conservation of water supplies
12 and adjacent properties within the territory of the authority.

14 The authority, for the purposes of its incorporation, may
adopt reasonable rules and regulations to control and regulate
16 the taking, acquisition, diversion and use of all surface waters
and groundwaters in and under the territory of the authority,
18 with the exception of the taking, acquisition, diversion or use
of water from Half Moon Pond or from the existing production
20 wells in the Town of Prospect owned by the Searsport Water
District pursuant to its legislative charter. The authority must
22 provide reasonable notice and hearing, as provided by Title 5,
chapter 375, before adopting any rule or regulation. The
24 authority may bring appropriate actions in the Superior Court to
enforce the rules and regulations.

26 All incidental powers, rights and privileges necessary to
28 the accomplishment of the objectives set forth in this Act and
not excluded by the terms of this Act, are granted to the
30 authority, including the authority to hire employees and contract
with persons as necessary to carry out the purposes of this Act.

32 The property, rights and franchise of the authority are
34 exempt from taxation.

36 **Sec. 3. Authorized to lay mains, pipes, conduits and other water**
conveyances through public ways and across private lands. The authority
38 may lay in, along, under and through the streets, roads, ways,
highways, bridges, tidal waters, lakes, ponds, rivers and water
40 courses in the territory of the authority and across private
lands in the Town of Prospect and in surrounding areas as
42 necessary for the purposes of this Act, and maintain, repair and
replace all such pipes, mains, conduits, aqueducts and fixtures
44 and appurtenances as may be necessary and convenient for its
corporate purposes and, whenever the district lays any pipes,
46 mains, conduits, aqueducts and fixtures or appurtenances in any
street, road, way or highway, it shall cause as little
48 obstruction as practicable to the public travel and, at its own
expense and without unnecessary delay, shall cause the earth and
50 pavement removed by it to be replaced in proper condition.

2 **Sec. 4. Authorized to erect dams and reservoirs; to cross navigable**
3 **waters; to supply water to utilities and others.** The authority, for the
4 purposes of its incorporation, may erect and maintain all dams,
5 reservoirs and structures necessary and convenient for its
6 corporate purposes. The authority may lay, construct and
7 maintain its pipes and fixtures in, over and under navigable
8 waters and build and maintain structures for the pipes and
9 fixtures, subject to the laws of the United States. The
10 authority may supply water to any state agency, municipality,
11 quasi-municipal corporation or private or public utility.

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

23 **Sec. 6. Authorized to acquire property; rights of eminent domain.**
24 The authority, for the purposes of its incorporation, may take
25 and hold, for public uses, real estate and personal estate and
26 any interest in real estate and personal estate necessary or
27 convenient for those purposes by purchase, lease or otherwise and
28 may exercise the right of eminent domain as provided in this Act
29 to acquire for those purposes any land or interest in land or
30 water rights necessary for erecting and maintaining dams, plants
31 and works; for flowage, power and pumping and supplying water
32 through its mains; for reservoirs, preserving the purity of the
33 water and watershed; for laying and maintaining aqueducts and
34 other structures; for taking, distributing, discharging and
35 disposing of water; for rights-of-way or roadways to its sources
36 of supply, dams, power stations, reservoirs, mains, aqueducts,
37 structures and lands; and for the purposes of protecting water
38 resources within and under the territory of the authority.

39 This section does not authorize and may not be construed as
40 authorizing the authority to take by right of eminent domain any
41 of the following:

42 1. Any right or rights of the Searsport Water District to
43 water in Half Moon Pond, pursuant to its legislative charter;

44 2. Any real estate owned by the Searsport Water District in
45 the Half Moon Pond watershed at the time of the creation of the
46 authority; or
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2 3. The production wells, pumps, associated transmission
3 mains and related personal property of all kinds of the Searsport
4 Water District in the Town of Prospect.

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

30 **Sec. 8. Adjustment of damages; procedure as in laying out of**
31 **highways.** If any person sustaining damages by any taking pursuant
32 to the right of eminent domain does not agree with the authority
33 upon the sum to be paid for the taking, either party, upon
34 petition to the county commissioners of Waldo County, may have
35 the damages assessed by the commissioners. The procedure and all
36 subsequent proceedings and rights of appeal are under the same
37 restrictions, conditions and limitations that are or may be by
38 law prescribed in the case of damages by the laying out of
39 highways.

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

50 **1. First board.** The municipal officers of the Town of

Prospect shall appoint the first board of trustees. Two trustees
2 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
4 meeting the initial trustees shall determine by agreement, or
failing to agree they shall determine by lot, the term of office
6 of each trustee. Vacancies are filled pursuant to subsection 4.

8 **2. Organization; conduct of business.** The organization,
powers and compensation of the board of trustees must be in
10 accordance with the Maine Revised Statutes, Title 35-A, section
6303, except as those provisions may be inconsistent with this
12 Act.

14 All decisions of the board of trustees must be by a majority of
those present and voting. Three trustees constitute a quorum.

16 **3. Bylaws.** The trustees may adopt and establish bylaws
18 necessary for the proper management of the affairs of the
authority.

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

40 The trustees may procure an office and incur necessary
expenses.

42 The trustees shall appoint a registrar of voters for the
44 authority, who may also be the registrar of voters for the Town
of Prospect, and fix the registrar's salary. It is the
46 registrar's duty to make and keep a complete list of all the
eligible voters of the authority. The list prepared by the
48 registrar, as provided by the laws of the State, governs the
eligibility of any voter. In determining the eligible voters of
50 the authority, the registrar of voters shall exclude from that

2 list and from all checklists the legal voters who are resident
3 outside the territorial limits of the authority as defined in
4 this Act. All warrants issued for elections by the trustees must
5 be varied accordingly to show that only the voters resident
6 within the territorial limits of the authority are entitled to
7 vote.

8 **Sec. 10. Annual report.** The trustees shall make and publish an
9 annual report, including a report of the treasurer. The report
10 may be included in and published as part of the annual town
11 report of the Town of Prospect.

12 **Sec. 11. Authority and towns authorized to make and assume**
13 **contracts.** The authority, through its trustees, in order to carry
14 out the objectives set forth in this Act, may contract with
15 persons, districts, municipalities, utilities or corporations.
16 The authority may contract with the Town of Prospect and the town
17 may contract with the authority for the supply of water for
18 municipal purposes.

19 **Sec. 12. Authorized to receive government aid; borrow money; issue**
20 **bonds and notes.** For accomplishing the purposes of this Act, the
21 authority, through its trustees and without vote of the
22 inhabitants, may receive state and federal aid or grants, borrow
23 money temporarily and issue for the money its negotiable notes to
24 renew and refund the indebtedness so created; to pay any
25 necessary expenses and liabilities incurred under this Act,
26 including organizational and other necessary expenses and
27 liabilities, whether incurred by the authority or by the Town of
28 Prospect in the creation of the authority and in efforts to
29 protect water pending creation of the authority, the authority
30 being authorized to reimburse the Town of Prospect for any such
31 expense incurred by the town; to acquire properties, pay damages,
32 lay pipes, mains, aqueducts and conduits, construct, maintain and
33 operate a water plant or system and make renewals, additions,
34 extensions and improvements to the water plant or system; and to
35 cover associated interest payments. The authority, through its
36 trustees, may also issue from time to time, in accordance with
37 the provisions of the Maine Revised Statutes, Title 35-A, section
38 6304, bonds, notes or other evidences of indebtedness of the
39 authority in such an amount or amounts, bearing interest at such
40 a rate or rates, selling at par or at a discount or a premium,
41 and to be sold in such a manner, at public or private sale, and
42 having such other terms and provisions as the trustees determine,
43 except that loans do not require the approval of the Public
44 Utilities Commission.

45 Bonds, notes and evidences of indebtedness of the authority
46 may be issued to mature serially or made to run for a term of
47 years as the trustees determine. Bonds, notes or evidences of
48 years as the trustees determine. Bonds, notes or evidences of
49

2 the indebtedness may be issued with or without provisions for
calling the bonds, notes or evidences of indebtedness prior to
4 maturity and, if callable, may be made callable at par or at any
premium the trustees determine. All bonds, notes or other
6 evidences of indebtedness must have inscribed upon their face the
words "Prospect Water Authority" and be signed by the treasurer
8 of the authority. If coupon bonds are issued, the interest
coupon attached to the coupon bonds must bear the facsimile
signature of the treasurer.

10
12 All bonds, notes and evidences of indebtedness issued by the
authority are legal obligations of the authority within the
14 meaning of the Maine Revised Statutes, Title 30-A, section 5701,
for purposes of which the authority is declared to be a
quasi-municipal corporation.

16
18 The authority may refund and reissue from time to time, in
one or in separate series, its bonds, notes and other evidences
20 of indebtedness, and each authorized issue constitutes a separate
loan. All bonds, notes and evidences of indebtedness issued by
22 the authority are legal investments for savings banks in the
State and are exempt from state income tax.

24 **Sec. 13. Rates.** The authority may determine and establish
rates, charges and fees for water or other services provided by
26 the authority, including hookup or connection charges to recover
the authority's capital costs. The rates established pursuant to
28 this section must be sufficient to provide revenue for the
purposes of this Act and for all other purposes of the authority,
30 without the need for any financial assistance from the Town of
Prospect, other than the normal payment of water charges for
32 services rendered and the loan or loans for initial funds as set
forth in section 12. Individuals, firms and corporations,
34 whether private, public or municipal, shall pay to the treasurer
or other designated officer of the authority the rates
36 established by the board of trustees for water used. The rates
may be established in accordance with the Maine Revised Statutes,
38 Title 35-A, section 6105 to provide for the purposes set forth in
that section. Rates may include the cost of reimbursement of the
40 costs of the Town of Prospect and of an annual stipend to the
Town of Prospect. The rates of the authority are not subject to
42 the jurisdiction of the Public Utilities Commission.

44 **Sec. 14. Existing laws not affected; authority not a public utility
under jurisdiction of Public Utilities Commission.** Nothing contained in
46 this Act is intended to repeal or may be construed as repealing
the whole or any part of any existing law.

48
50 **Sec. 15. Separability clause.** If any section or part of a
section of this Act is held invalid by a court of competent

2 jurisdiction, the holding does not affect the remainder of this
Act, it being the intention that the remaining portions of this
4 Act stand, notwithstanding the unconstitutionality or invalidity
of any section, sentence, clause or phrase.

6 **Sec. 16. Emergency clause; referendum; effective date.** In view of
the emergency cited in the preamble, this Act takes effect when
8 approved but only for the purposes of permitting its submission
to the legal voters of the Town of Prospect at an election called
10 for that purpose and held by December 31, 1995. The election
must be called, advertised and conducted according to the law
12 relating to municipal elections, except that the registrar of
voters is not required to prepare or the clerk to post a new list
14 of voters and, for this purpose, the registrar of voters must be
in session the 3 secular days preceding the election, of which
16 the first 2 days must be devoted to registration of the voters
and the last day to verification of the list and completion of
18 the records of these sessions by the registrar. The subject
matter of this Act is reduced to the following question:

20 "Do you favor creating the Prospect Water Authority?"

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

26 The results must be declared by the municipal officers of
the Town of Prospect and the due certificate of the results filed
28 by the clerk with the Secretary of State.

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

36
38 **STATEMENT OF FACT**

40 This bill creates the Prospect Water Authority.