

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 503

S.P. 159

In Senate, February 6, 2001

**An Act to Authorize the Town of Bar Harbor to Acquire the Bar Harbor  
Water Company.**

(EMERGENCY)

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.  
Cosponsored by Representative KOFFMAN of Bar Harbor.



2 expense, without unnecessary delay, shall cause the earth and  
pavement removed by it to be replaced in proper condition.

4 **Sec. 3. Authorized to erect dams and reservoirs; to cross navigable**  
**waters; to supply water to utilities.** The Town of Bar Harbor, for the  
6 purposes in this Act, may erect and maintain all dams, reservoirs  
and structures necessary and convenient for its town purposes.  
8 The town may lay, construct and maintain its pipes and fixtures  
in, over and under navigable waters and build and maintain  
10 structures for the pipes and fixtures, subject to the laws of the  
United States. The town may supply water to any public utility  
12 now supplying water in Hancock County, subject to the consent of  
the Public Utilities Commission.

14 **Sec. 4. Rights of eminent domain.** The Town of Bar Harbor, for  
16 the purposes in this Act, may take and hold, as for public uses,  
real estate and personal estate and any interest in real estate  
18 and personal estate necessary or convenient for those purposes by  
purchase, lease or otherwise and may exercise the right of  
20 eminent domain as provided in this Act to acquire for those  
purposes any land or interest in land or water rights necessary  
22 for erecting and maintaining dams, plants and works, for flowage,  
power, pumping, supplying water through its mains; for  
24 reservoirs, preserving the purity of the water and watershed; for  
laying and maintaining aqueducts and other structures; for  
26 taking, distributing, discharging and disposing of water; and for  
rights-of-way or roadways to its sources of supply, dams, power  
28 stations, reservoirs, mains, aqueducts, structures and lands.

30 This section may not be construed as authorizing the town to  
take by right of eminent domain any of the property or facilities  
32 of any other public utility used, or acquired for future use, by  
the owner of that property or those facilities, in the  
34 performance of a public duty, except as expressly provided in  
section 10.

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

48 **Sec. 6. Procedure in exercising of eminent domain.** After the  
50 original acquisition for which provision is made in section

2 10, the Town of Bar Harbor, in exercising any right of eminent  
3 domain in the taking of land, interests in the land or water  
4 rights, shall file in the office of the county commissioners of  
5 Hancock County and recorded in the Hancock County Registry of  
6 Deeds plans of the location of all such property to be taken with  
7 an appropriate description and the names of the owners, if  
8 known. Notice of the filing must be sent by mail to the owners  
9 at the address appearing on the tax records of the municipality  
10 in which the land is located. When for any reason the town fails  
11 to acquire the property it is authorized to take, and which is  
12 described in that location, or if the location recorded is  
13 defective or uncertain, it may, at any time, correct and perfect  
14 that location and file a new description, and in such case the  
15 town is liable for damages only for property for which the owner  
16 had not previously been paid, to be assessed as of the time of  
17 the original taking, and the town is not liable for any acts that  
18 would have been justified if the original taking had been  
19 lawful. Entry may not be made on any private lands, except to  
20 make surveys, until the expiration of 10 days from that filing,  
21 at which time possession may be had of all lands, interests in  
22 the lands or water rights so taken, but title does not vest in  
the town until payment has been made.

24 **Sec. 7. Adjustment of damages; procedure as in laying out of**  
25 **highways.** If any person sustaining damages by any taking  
26 pursuant to the right of eminent domain does not agree with the  
27 Town of Bar Harbor upon the sum to be paid for the taking, either  
28 party, upon petition to the county commissioners of Hancock  
29 County, may have the damages assessed by them. The procedure and  
30 all subsequent proceedings and right of appeal are under the same  
31 restrictions, conditions and limitations as are or may be by law  
32 prescribed in the case of damages by the laying out of highways.

34 **Sec. 8. Annual report.** The Town of Bar Harbor shall make and  
35 publish an annual report of the income and expenses related to  
36 the collection and distribution of water. The report may be  
37 included in and published as part of the annual town report of  
38 the Town of Bar Harbor.

40 **Sec. 9. Town authorized to make contracts.** The Town of Bar  
41 Harbor, through its municipal officers, may contract with persons  
42 and corporations for the supply of water to those persons and  
43 corporations.

44 **Sec. 10. Town authorized to acquire property and franchises of Bar**  
45 **Harbor Water Company.** The Town of Bar Harbor, through its  
46 municipal officers, may acquire by purchase the stock of the Bar  
47 Harbor Water Company and the entire plant, properties,  
48 franchises, rights and privileges owned by the Bar Harbor Water  
49 Company, located within the Town of Bar Harbor, including all  
50 lands, waters,

2 water rights, reservoirs, pipes, machinery, fixtures, hydrants,  
3 tools and all apparatus and appliances used or usable in  
4 supplying water in the area of the town. The town may acquire by  
5 the exercise of the right of eminent domain, a right expressly  
6 delegated to the town for that purpose, the stock of the Bar  
7 Harbor Water Company and the entire plant, properties,  
8 franchises, rights and privileges, except cash assets and  
9 accounts receivable, owned by the Bar Harbor Water Company,  
10 including all lands, waters, water rights, dam structures,  
11 reservoirs, pipes, machinery, fixtures, hydrants, tools and all  
12 apparatus and appliances used or usable in supplying water in the  
13 area of the town, and if and when so acquired, the town, in  
14 addition to the powers conferred by this Act, is entitled to  
15 exercise all rights, privileges and franchises of the Bar Harbor  
16 Water Company.

17 In exercising the right of eminent domain under this Act the  
18 municipal officers shall file with the town clerk a condemnation  
19 order that includes a detailed description of the property  
20 interest to be taken, the name or names of the owner or owners of  
21 record as far as they can be reasonably determined and the amount  
22 of damages determined by the municipal officers to be just  
23 compensation for the property or interest in the property taken.  
24 The municipal officers shall then serve upon the owner or owners  
25 of record a copy of the condemnation order and a check in the  
26 amount of the damages awarded and record a certified copy of the  
27 condemnation order in the Hancock County Registry of Deeds. In  
28 the event of multiple ownership, the check may be served on any  
29 one of the owners. This title passes to the town upon service of  
30 the condemnation order and check or upon recordation in  
31 accordance with this Act, whichever occurs first. Acceptance and  
32 negotiation of the check do not bar an appeal under this Act.

33 Any person aggrieved by the determination of the damages  
34 awarded to owners of property or interests in the property under  
35 this Act may, within 60 days after service of the condemnation  
36 order and check, appeal to the Superior Court of Hancock County.  
37 The court shall determine damages by a verdict of its jury or, if  
38 all parties agree, by the court without a jury or by a referee or  
39 referees, and shall render judgment for just compensation, with  
40 interest when such is due, and for costs in favor of the party  
41 entitled to the costs. Appeal from the decision of the Superior  
42 Court may be made to the Law Court, as in other civil actions.  
43

44 **Sec. 11. Rates.** Individuals, firms and corporations, whether  
45 private, public or municipal, shall pay to the treasurer or other  
46 designated officer of the Town of Bar Harbor the rates  
47 established by the municipal officers for the water used by  
48 them. The rates must be established in accordance with the Maine

2 Revised Statutes, Title 35-A, chapter 61 to provide for the  
purposes set forth in chapter 61.

4 **Sec. 12. Existing laws not affected; rights conferred subject to**  
**provisions of law.** Nothing contained in this Act is intended to  
6 repeal, or may be construed as repealing, the whole or any part  
of any existing law, and all the rights and duties mentioned in  
8 this Act must be exercised and performed in accordance with all  
the applicable provisions and amendatory acts to the Maine  
10 Revised Statutes, Title 35-A to the extent that Title 35-A and  
its amendments affect the operations of the Town of Bar Harbor.

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

20 **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

## 24 SUMMARY

26 The Town of Bar Harbor has legislative authority to take  
real estate by eminent domain for public use. This legislation  
28 expands the eminent domain authority of the Town of Bar Harbor to  
include not only real property but also the personal property  
30 assets of the Bar Harbor Water Company. This bill allows the  
town to control water supply and distribution. The legislation  
32 contains an emergency preamble and emergency clause to make the  
law effective immediately.