

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1793

S.P. 637

March 29, 2007

**An Act To Authorize Peaks Island, House Island, Pumpkin Knob
and Catnip Island To Secede from the City of Portland**

Reference to the Committee on State and Local Government 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 SAVAGE of Knox.

Cosponsored by Representative PENDLETON of Scarborough and Senators: DAMON of Hancock, DOW of Lincoln, Representatives: BEAUDOIN of Biddeford, CURTIS of Madison, JOY of Crystal, McKANE of Newcastle, PINGREE of North Haven, WEAVER of York.

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

2 **PART A**

3 **Sec. A-1. Separation of Peaks Island, House Island, Pumpkin Knob and**
4 **Catnip Island and incorporation as Town of Peaks Island.** Subject to a
5 referendum election held in accordance with section 2, the following territory now within
6 the City of Portland and Cumberland County, together with the inhabitants of that
7 territory, is separated and set off from the City of Portland and incorporated into a
8 separate town by the name of the Town of Peaks Island: Peaks Island, House Island,
9 Pumpkin Knob, Catnip Island and the surrounding waters, referred to in this Act as "the
10 Peaks Island territory." By virtue of this separation, the Town of Peaks Island is also
11 removed from the jurisdiction of the Board of Harbor Commissioners of the Port of
12 Portland but remains within Cumberland County.

13 The boundaries of the Town of Peaks Island are described as follows: All that part of
14 the City of Portland in Cumberland County in the State of Maine beginning from sea
15 NNW along the Long Island line to a point in the waters of Hussey Sound between Long
16 Island, Peaks Island and Great Diamond Island starting at 43° 40' 47.1" N by 70° 10'
17 56.29" W, extending SW to 43° 40' 35.93" N by 70° 11' 12.04" W, continuing to 43° 40'
18 0.13" N by 70° 12' 5.78" W, continuing SW to 43° 39' 34.86" N by 70° 12' 34.34" W,
19 then SW to 43° 39' 3.69" N by 70° 12' 59.96" W, then SE to 43° 38' 54" N by 70° 12'
20 47.73" W, then E to 43° 38' 56.37" N by 70° 11' 34.73" W, then E to 43° 38' 57" N by
21 70° 11' 8.64" W, then SSE to sea along a line parallel to the Long Island line.

22 **Sec. A-2. Referendum election.** This Part takes effect no sooner than 30 days
23 after completion of agreement or arbitration of debts and assets between the Peaks Island
24 territory and the City of Portland in Part B to permit its submission to the voters of the
25 Peaks Island territory at a special referendum election to be held on June 15, 2008.
26 Warrants must be issued for this election notifying the qualified voters to vote on the
27 approval or rejection of this Part.

28 For the purposes of this referendum election, all persons resident and legally
29 registered to vote within the Peaks Island territory are eligible to vote on the question
30 with respect to the separation of the Peaks Island territory from the City of Portland.

31 The city clerk of the City of Portland shall prepare the required ballots on which the
32 subject matter of this Act must be reduced to the following question:

33 "Do you favor the separation of Peaks Island, House Island, Pumpkin
34 Knob and Catnip Island and the surrounding waters from the City of
35 Portland and their incorporation as a separate town?"

36 The voters shall indicate by a cross or check mark placed against the word "Yes" or
37 "No" their vote on this question.

38 The referendum election must be conducted by the city clerk of the City of Portland,
39 who shall declare the result of the election. After the polls close and after a ballot
40 inspection and recount, if one is necessary, the city clerk's declaration of the election

1 results is final, subject to review by the Superior Court for the County of Cumberland.
2 The city clerk shall file the results of the referendum election with the Secretary of State.
3 The Peaks Island territory shall reimburse the City of Portland for the reasonable and
4 necessary administrative costs the City of Portland incurs in conducting this referendum
5 election.

6 **Sec. A-3. Effective date of separation.** If a majority of those voting in the
7 referendum under section 2 approve the question, this Part takes effect with respect to the
8 Peaks Island territory and the Peaks Island territory is separated from the City of Portland
9 and is incorporated as the Town of Peaks Island on July 1, 2009.

10 **Sec. A-4. Provision for first meeting.** If a majority of those voting in the
11 referendum under section 2 approve the question, within 30 days after the election a
12 justice of the peace or notary public may issue a warrant to any legal voter in the Peaks
13 Island territory directing that legal voter to notify the municipal inhabitants within the
14 Peaks Island territory of a public meeting to select 9 transition representatives by written
15 ballot. Notice to the municipal inhabitants must be provided at least 7 days prior to the
16 meeting.

17 Effective immediately after the election, the transition representatives selected at the
18 meeting are vested with the powers to represent the future Town of Peaks Island and to
19 enter into letters of intent and memoranda of understanding for the establishment of its
20 local government, to negotiate interlocal agreements and to engage in other necessary
21 transition activities.

22 Any agreements made by the transition representatives must be presented for
23 ratification by the Town of Peaks Island's legislative body after the incorporation of the
24 Town of Peaks Island. The term of the transition committee members expires July 31,
25 2009.

26 Within 30 days prior to July 1, 2009, a justice of the peace or notary public may issue
27 a warrant to any legal voter in the Town of Peaks Island directing that legal voter to
28 notify the municipal inhabitants of a public meeting to select municipal officers and
29 school board members and to transact municipal business, to be held at a time and place
30 specified in the warrant. Notice to the municipal inhabitants must be provided at least 7
31 days prior to the meeting. Effective July 1, 2009, municipal officers and school board
32 members selected at the meeting are vested with all the powers and duties that other duly
33 elected municipal officers and school board members have, including the power to raise,
34 borrow and spend money.

35 **Sec. A-5. Form of government.** If a majority of those voting in the referendum
36 under section 2 approve the question, the Town of Peaks Island will be incorporated and
37 separated from the City of Portland on July 1, 2009 and shall adopt the town meeting as
38 its form of government.

39 This Act does not prevent the Town of Peaks Island from subsequently voting to
40 change its form of government without the necessity of a further act of the Legislature.

1 **Sec. A-6. Allocation of debts and assets.** If the Town of Peaks Island is
2 incorporated and is separated from the City of Portland on July 1, 2009, the Town of
3 Peaks Island shall assume its just and due proportion of the debts of the City of Portland
4 and must receive its just and due proportion of the assets of the City of Portland,
5 including property taxes collected from July 1, 2008 to June 30, 2009. Any debt or any
6 asset may be excluded upon agreement of both parties.

7 **Sec. A-7. Municipal employees.** If the Town of Peaks Island is incorporated and
8 is separated from the City of Portland, that separation does not affect in any way the
9 tenure rights existing on June 15, 2008 of those school teachers and staff within the
10 Portland Public Schools system who are employed as of June 15, 2008 at the Peaks Island
11 School or of any other City of Portland municipal employees who work on Peaks Island
12 and who elect to remain employed by the Portland Public Schools system or by the City
13 of Portland.

14 **Sec. A-8. Sewage treatment services.** If the Peaks Island territory is separated
15 from the City of Portland and is incorporated as the Town of Peaks Island, the Portland
16 Water District shall provide wastewater and sewage services to the Town of Peaks Island
17 in accordance with the district's charter. The allocation of financing, operating and
18 maintenance costs and any other costs related to wastewater and sewage collection,
19 interception and treatment under this section must be consistent with the Portland Water
20 District charter, except that, if agreement is not reached between the Town of Peaks
21 Island and the City of Portland, the arbitration panel established pursuant to Part B,
22 section 2 may allocate or reallocate between the City of Portland and the Town of Peaks
23 Island any of the financing, operating and maintenance costs and any other costs related
24 to wastewater and sewage collection in its total allocation of debts and assets.

25 If the Town of Peaks Island fails to make necessary payments on any bonded
26 indebtedness and interest for the wastewater and sewage collection facilities on Peaks
27 Island allocated to the Town of Peaks Island pursuant to section 6, the City of Portland
28 shall pay the principal and interest on any bonds issued by the Portland Water District
29 prior to July 1, 2009. If the City of Portland makes such payments, the Town of Peaks
30 Island shall reimburse the City of Portland those payments and the City of Portland has a
31 cause of action against the Town of Peaks Island for any unpaid amount of those
32 payments.

33 **Sec. A-9. Water rates.** If the Town of Peaks Island is incorporated and is
34 separated from the City of Portland, the Portland Water District shall provide water
35 service to the Town of Peaks Island in accordance with the district's charter and may
36 charge rates in accordance with the provisions of the Maine Revised Statutes, Title 35-A,
37 chapter 61.

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PART B

39 **Sec. B-1. Other duties and responsibilities.** Projected debts, assets and
40 property taxes for the period June 30, 2008 to July 1, 2009 must be allocated between the
41 City of Portland and the Town of Peaks Island as set forth in Part A, section 6. The City
42 of Portland and the Town of Peaks Island shall allocate other duties and responsibilities

1 between themselves as they mutually determine to be necessary and appropriate and shall
2 negotiate with each other in good faith.

3 **Sec. B-2. Agreement binding; binding arbitration.** Negotiations under
4 section 1 must be completed by January 1, 2008. This deadline may be extended by
5 mutual agreement of the City of Portland and the Town of Peaks Island. If the parties
6 reach agreement by the date agreed upon by the parties, the agreement must be reduced to
7 writing and is final and binding on the City of Portland and the Town of Peaks Island
8 upon incorporation of the Town of Peaks Island on July 1, 2009, if the referendum
9 question in Part A, section 2 is approved.

10 If the parties do not reach agreement by January 1, 2008, the parties shall submit any
11 matters remaining in dispute to a panel of arbitrators and shall reduce to writing all
12 matters agreed upon. The panel of arbitrators consists of one arbitrator selected by the
13 City of Portland, one arbitrator selected by the representatives of the Island Independence
14 Committee and one neutral arbitrator selected jointly by the other 2 arbitrators. The
15 Peaks Island territory shall pay the costs of arbitrators. Determination of disputed matters
16 by the panel of arbitrators is final and binding on the parties. The arbitration must be
17 administered under the auspices of the American Arbitration Association and, except for
18 the selection of arbitrators, is governed by the commercial rules and procedures of the
19 American Arbitration Association. The concept of "last best offer" must be used. These
20 issues must be resolved no later than May 1, 2008.

21 **Sec. B-3. Educational needs.** Upon the date of its secession from the City of
22 Portland and incorporation as the Town of Peaks Island, the Town of Peaks Island
23 becomes a municipal school unit as defined in the Maine Revised Statutes, Title 20-A,
24 section 1, subsection 19. No further referenda, legislation or dispensations by the State or
25 any of its officers, departments or agencies is required of the Town of Peaks Island prior
26 to its undertaking the education of its school-age children.

27 The Town of Peaks Island shall start providing education services upon the date of its
28 secession from the City of Portland and incorporation as the Town on Peaks Island as
29 required by Title 20-A, including, but not limited to, matters of curriculum, instruction,
30 transportation, mainland student transition, attendance, student eligibility for enrollment,
31 student records, audits, employee and applicant records, standards and assessment of
32 student performance, health, nutrition and safety, immunization, school lunch programs,
33 special education, school finances, gifted and talented students, career and technical
34 education and adult and vocational education.

35 The Town of Peaks Island's education plan must provide for the transition of
36 administration and governance of the Peaks Island School to the properly elected Town
37 of Peaks Island school board. This Act may not be construed to prevent the Town of
38 Peaks Island school board from making changes to the provision of education services
39 and the education plan in accordance with the school board's powers and duties pursuant
40 to Title 20-A.

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PART C

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Sec. C-1. Hold harmless provision and enforcement. The municipal officers, municipal officials and residents of the City of Portland and the Town of Peaks Island and all their agents are immune from liability for any action taken as a result of this Act. The City of Portland and the Town of Peaks Island, or their successors in interest, may enforce this Act by civil action in Superior Court. In any action between the City of Portland and the Town of Peaks Island, the court shall award reasonable attorney's fees to the prevailing party.

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Sec. C-2. Equal rights. After the separation and incorporation of the Town of Peaks Island, residents of the Town of Peaks Island and the City of Portland continue to enjoy equal access to municipally owned public lands for travel, recreation and related activities and enjoy all the rights and privileges they enjoyed before the separation, just as residents of other towns and municipalities enjoy.

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SUMMARY

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This bill authorizes the incorporation of Peaks Island, House Island, Pumpkin Knob and Catnip Island into the Town of Peaks Island if the legal residents of those territories approve, by referendum, separation from the City of Portland and incorporation as a separate town. Part B clarifies the binding arbitration process. Part C specifies the liability and rights of the City of Portland and the Town of Peaks Island.