

MAINE STATE LEGISLATURE

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Legislative Document

No. 1318

H.P. 921

House of Representatives, March 31, 2009

An Act To Create the Hancock Pond Water District

(EMERGENCY)

Reference to the Committee on Utilities and Energy suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CURTIS of Madison.

Cosponsored by Representative: PINKHAM of Lexington Township, Senator: MILLS of Somerset.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the residents of the towns of Madison and Anson are in immediate need
4 of forming a quasi-municipal regional entity to supply potable water within those towns;
5 and

6 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
7 the meaning of the Constitution of Maine and require the following legislation as
8 immediately necessary for the preservation of the public peace, health and safety; now,
9 therefore,

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

11 **Sec. 1. Territorial limits; corporate name.** Pursuant to the Maine Revised
12 Statutes, Title 35-A, section 6403, subsection 1, paragraphs A and B and subject to
13 section 8 of this Act, the territory and the inhabitants of the Town of Madison and the
14 Town of Anson constitute a standard water district under the name "Hancock Pond Water
15 District," referred to in this Act as "the district."

16 **Sec. 2. Powers; authority; duties.** Except as otherwise expressly provided in
17 this Act, the district has all the powers and authority and is subject to all the requirements
18 and restrictions provided in the Maine Revised Statutes, Title 35-A, chapter 64, and is
19 authorized to perform all acts and to do all things necessary or convenient to carry out the
20 purposes and powers provided in this Act or reasonably implied from those purposes and
21 powers. The district is also authorized to provide sewerage services and, for that purpose,
22 is authorized to exercise all the powers of a sanitary district pursuant to the Maine
23 Sanitary District Enabling Act.

24 **Sec. 3. Authority to take water.** Notwithstanding the Maine Revised Statutes,
25 Title 35-A, section 6404, the district is authorized to take, to hold and to convey within
26 the Town of Madison and the Town of Anson and from any part of those towns water
27 from any surface and groundwater source within the towns, including without limitation
28 the Kennebec River, Wesserunsett Lake, also known as Hayden Lake, and Marshall's
29 Pond. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6404, the district
30 is authorized to take, to hold and to convey within the Town of Embden water from
31 Hancock Pond, Sand Pond, Black Hill Pond, Mill Stream and Embden Pond and any of
32 the tributary lakes and streams of that pond and to erect, maintain and operate dams,
33 reservoirs, gates, hydrants, standpipes and all other structures and improvements
34 necessary or convenient for accomplishing the purposes of this Act and to lay down,
35 maintain and operate pipes, aqueducts and all other structures and improvements
36 necessary or convenient for accumulating, conducting, discharging, distributing and
37 disbursing water, for forming proper reservoirs for those purposes and for accomplishing
38 the purposes of this Act. Notwithstanding the Maine Revised Statutes, Title 35-A,
39 section 6403, subsection 2, paragraphs F and G, the district is authorized to supply,
40 furnish or otherwise provide water within the Town of Embden pursuant to contract and
41 to construct, locate, acquire, equip, maintain and operate facilities and all other structures
42 and improvements necessary or convenient for accomplishing those purposes. The

1 district is authorized to lay in or through the streets and highways of the Town of
2 Embden, and to maintain, operate, take up, repair and replace all pipes, aqueducts,
3 fixtures and other structures and improvements necessary or convenient for
4 accomplishing the purposes of this section.

5 **Sec. 4. Additional powers; eminent domain.** Notwithstanding the Maine
6 Revised Statutes, Title 35-A, sections 6404, 6405, 6406, 6408, subsection 2 and 6409, the
7 district has the powers and authority provided in this section.

8 The district has the power and is authorized to survey for, lay, erect and maintain
9 suitable dams, reservoirs, aqueducts, pipes, hydrants, buildings, treatment or purification
10 plants, pumping equipment and fixtures for flowage, power, pumping its water supply or
11 conveying wastewater produced in the operation of a treatment or filtration facility
12 through its mains, to enter upon any land or public way for laying, erecting and
13 maintaining the pipes and structures and to make surveys for those purposes and to pass
14 over, excavate and flow any lands.

15 The district is authorized to take and hold for public uses, by purchase, eminent
16 domain or otherwise, any land that may be necessary for supplying, treating or purifying
17 water, conveying wastewater, laying and maintaining its pipelines and constructing other
18 structures, preserving the purity of its watershed and ensuring the purity of its water
19 supply. The district is also authorized to take and hold in the same manner any land that
20 may be necessary for rights of way or roadways to its sources of supply, dams, power
21 stations, reservoirs, mains, aqueducts, structures and land. The district may hold all real
22 estate and personal property necessary or convenient for these purposes.

23 The district may not take by right of eminent domain any property or facilities of any
24 other public utility used or acquired for future use in the performance of a public duty.

25 The district shall file in the registry of deeds for Somerset County plans and
26 descriptions of the location of all the lands and water rights taken under the provisions of
27 this Act and entry may not be made upon any land, except to make surveys, until the
28 expiration of 10 days from the filing. The district may file with the plan a statement of
29 the damages it is willing to pay to any person for any property or property rights taken. If
30 the amount finally awarded does not exceed that sum, the district may recover costs
31 against a person. Otherwise that person may recover costs against the district. Within 30
32 days after the filing of the plans and descriptions, the district shall publish notice of the
33 taking and filing in a newspaper having circulation in the county, the publication to be
34 continued 3 weeks successively.

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

1 **Sec. 5. Trustees; how elected; first board; meetings; officers.** All of the
2 affairs of the district must be managed by a board of trustees composed of 7 members: 3
3 residents of the Town of Madison, 3 residents of the Town of Anson and one resident of
4 the Town of Embden.

5 **1. First board.** The first board of trustees of the district is appointed by the trustees
6 of the Madison Water District, the trustees of the Anson Water District and the municipal
7 officers of the Town of Embden. Within 30 days after the date on which this Act takes
8 effect for all purposes pursuant to section 8 of this Act, the trustees of the Madison Water
9 District shall appoint 3 trustees who must be residents of the Town of Madison, the
10 trustees of the Anson Water District shall appoint 3 trustees who must be residents of the
11 Town of Anson and the municipal officers of the Town of Embden shall appoint one
12 trustee who must be a resident of the Town of Embden.

13 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 4, each
14 trustee appointed from the Town of Madison serves an initial term specified in the
15 appointment by the trustees of the Madison Water District as follows: one for a term that
16 expires on November 15th of the year that is one year after the year in which the trustee
17 was appointed, one for a term that expires on November 15th of the year that is 2 years
18 after the year in which the trustee was appointed and one for a term that expires on
19 November 15th of the year that is 3 years after the year in which the trustee was
20 appointed. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410,
21 subsection 4, without limit, each trustee appointed from the Town of Anson serves an
22 initial term specified in the appointment by the trustees of the Anson Water District as
23 follows: one for a term that expires on November 15th of the year that is one year after
24 the year in which the trustee was appointed, one for a term that expires on November
25 15th of the year that is 2 years after the year in which the trustee was appointed and one
26 for a term that expires on November 15th of the year that is 3 years after the year in that
27 the trustee was appointed. Notwithstanding the Maine Revised Statutes, Title 35-A,
28 section 6410, subsection 4, the trustee appointed from the Town of Embden serves for an
29 initial term that expires on November 15th of the year that is one year after the year in
30 which the trustee was appointed.

31 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 4,
32 when the term of office of a trustee from the Town of Madison or from the Town of
33 Anson expires, the trustee's successor is elected at large by a plurality vote of the voters
34 of the district. Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410,
35 subsection 1, for the purpose of election, a special election must be called by the trustees
36 and held on the date of a statewide election held in the month of November in the year in
37 which the term of office of the trustee expires or, if there is no statewide election in
38 November that year, on a date established by the trustees between November 1st and
39 November 14th in the year in which the term of office of the trustee expires.

40 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 4,
41 when the term of office of a trustee from the Town of Embden expires, the municipal
42 officers of the Town of Embden shall appoint a successor trustee who must be a resident
43 of the Town of Embden and who serves for a term that expires on November 15th of the
44 year after the year in which the term of the predecessor trustee expires.

1 **2. Organization; conduct of business.** Except as otherwise expressly provided in
2 this Act, the organization and powers of the board of trustees must be in accordance with
3 the Maine Revised Statutes, Title 35-A, chapter 64.

4 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 4,
5 within 60 days after the date on which this Act takes effect for all purposes pursuant to
6 section 8 of this Act, the trustees shall meet and organize by adopting a corporate seal and
7 by electing a chair and a clerk from among them and by electing a treasurer who may or
8 may not be a trustee, all to serve until November 15th of the year in which a trustee is
9 elected pursuant to subsection 1 and until their successors are elected.

10 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6410, subsection 5,
11 within 30 days after November 15th of each year, the trustees of the district shall meet for
12 the purposes of electing a chair and a clerk from among them and electing a treasurer who
13 may or may not be a trustee, all to serve for the ensuing year and until their successors are
14 elected.

15 A quorum of the board of trustees is four trustees.

16 **3. Bylaws.** The trustees may adopt and establish such bylaws as are necessary or
17 convenient for the management of the affairs of the district.

18 **4. Terms; vacancy.** Trustees from the Town of Madison and the Town of Anson
19 serve 3-year terms. The appointed trustee from the Town of Embden serves a one-year
20 term. The successor of a trustee who is a resident of the Town of Madison must be a
21 resident of the Town of Madison elected by the inhabitants of the district. The successor
22 of a trustee who is a resident of the Town of Anson must be a resident of the Town of
23 Anson elected by the inhabitants of the district. A trustee elected in anticipation of the
24 expiration of the term of a trustee serves for a term that expires on November 15th of the
25 year that is 3 years after the year in which that trustee was elected. If the office of a
26 trustee becomes vacant, the vacancy is filled in the same manner for the unexpired term
27 by a special election called by the trustees of the district. When any trustee ceases to be a
28 resident of the town in which the trustee resided when appointed or when nominated and
29 elected, the trustee shall vacate the office of trustee and the vacancy must be filled as
30 provided in this subsection. A trustee is eligible for reelection, but a person who is a
31 municipal officer of the Town of Madison or the Town of Anson is not eligible for
32 appointment or for nomination or election as a trustee.

33 **Sec. 6. Finance.** Notwithstanding the Maine Revised Statutes, Title 35-A, section
34 6412, subsections 1 and 2 and section 6413, the district, in order to accomplish the
35 purposes of this Act, by vote of its board of trustees and without district vote, is
36 authorized to borrow money, including temporary borrowing, without limit, for the
37 purposes of paying necessary expenses and liabilities incurred under this Act, acquiring
38 properties, paying damages, laying pipes, mains, sewers, drains and conduits, purchasing,
39 constructing, maintaining and operating a water system and making renewals, additions,
40 extensions and improvements to that system and is authorized to issue, without limit,
41 from time to time, bonds, notes or other evidences of indebtedness of the district in such
42 amount or amounts, bearing interest at such rate or rates and having such terms and
43 provisions as the trustees determine pursuant to this Act. In the case of a vote by the
44 trustees to authorize bonds, notes or other evidences of indebtedness to pay for the

1 acquisition of property, the cost of a water system or part of a water system, renewals or
2 additions or for other improvements in the nature of capital costs, for renewing or
3 refunding existing indebtedness or to pay for maintenance, repairs or current expenses,
4 notice of the proposed debt and of the general purpose or purposes for which it was
5 authorized must be given by the district by publication at least once in a newspaper
6 having circulation in the towns of Madison and Anson.

7 Notwithstanding the Maine Revised Statutes, Title 35-A, section 6412, subsection 4,
8 interest or dividends paid on bonds, notes or other evidences of indebtedness issued under
9 this Act are exempt from taxation within the State, whether or not such income is subject
10 to taxation under the United States Internal Revenue Code, as amended.

11 In addition to the authority set forth in the Maine Revised Statutes, Title 35-A,
12 section 6416, all district funds, including reserve funds and trust funds to the extent that
13 the terms of the instrument or vote creating the fund do not prohibit, may also be
14 deposited or invested by the treasurer under the direction of the trustees according to the
15 requirements for the deposit or investment of municipal funds contained in the Maine
16 Revised Statutes, Title 30-A, section 5706 and section 5712, subsections 1, 2 and 3.

17 **Sec. 7. Transfer of assets and liabilities of the Madison Water District**
18 **and the Anson Water District.** The district, through its trustees, shall acquire, in
19 accordance with this section, all of the plants, properties, assets, franchises, rights and
20 privileges of the Madison Water District and the Anson Water District, including, without
21 limitation, lands, buildings, waters, water rights, springs, wells, reservoirs, tanks,
22 standpipes, mains, pumps, pipes, machinery, fixtures, hydrants, meters, services, tools,
23 equipment, apparatus and appliances used or useful in supplying water for domestic,
24 commercial, industrial and municipal purposes and shall, by appropriate instruments,
25 assume, in accordance with this section, all of the outstanding debts, obligations and
26 liabilities of the Madison Water District and the Anson Water District, including, without
27 limitation, the assumption of any outstanding bonds, notes or other evidences of
28 indebtedness of the Madison Water District and the Anson Water District that are due on
29 or after the date of transfer.

30 The Madison Water District, a quasi-municipal corporation organized and existing
31 pursuant to Private and Special Law 1913, chapter 121, as amended, and the Anson
32 Water District, a quasi-municipal corporation organized and existing pursuant to Private
33 and Special Law 1915, chapter 200, as amended, shall, through their respective trustees,
34 assign, transfer and convey to the district by appropriate instruments of conveyance all,
35 and not less than all, of their respective plants, properties, assets, franchises, rights and
36 privileges, including, without limitation, lands, buildings, waters, water rights, springs,
37 wells, reservoirs, tanks, standpipes, mains, pumps, pipes, machinery, fixtures, hydrants,
38 meters, services, tools, equipment, apparatus and appliances used or useful in supplying
39 water for domestic, commercial, industrial and municipal purposes; in consideration of
40 the assumption by the district of all of the outstanding debts, obligations and liabilities of
41 the Madison Water District and the Anson Water District, including, without limitation,
42 the assumption of any outstanding bonds, notes or other evidences of indebtedness of the
43 Madison Water District and the Anson Water District that are due on or after the date of
44 transfer.

1 The transfer by the Madison Water District and the Anson Water District to the
2 district of their respective plants, properties, assets, franchises, rights and privileges, the
3 assumption by the district of all of the outstanding debts, obligations and liabilities of the
4 Madison Water District and the Anson Water District pursuant to this section and the
5 subsequent use of the plants, properties, assets, franchises, rights and privileges by the
6 district within the limits of the district are subject to the approval of the Public Utilities
7 Commission as may be required by the Maine Revised Statutes, Title 35-A, Part 1.

8 Promptly after completion of the transfer and assumption of assets and liabilities
9 pursuant to this section, the Madison Water District and the Anson Water District shall
10 cause to be filed with the Secretary of State a certificate of dissolution certifying the
11 name of that district and that all assets of that district and all debts, obligations and
12 liabilities of that district have been transferred to the district and that is signed by the
13 chair or presiding trustee of that district and by the clerk, secretary or another officer of
14 that district. Upon the respective filing dates of the certificates of dissolution of the
15 Madison Water District and the Anson Water District, the existence of that district ceases.

16 **Sec. 8. Emergency clause; referendum; effective date.** In view of the
17 emergency cited in the preamble, this Act takes effect when approved only for the
18 purpose of permitting its submission to the legal voters within the territory described in
19 section 1 of this Act at a referendum called for that purpose and held after May 1, 2009
20 but within 2 years after the effective date of this Act. The referendum must be called by
21 the municipal officers of the respective towns and must be held at the regular voting
22 places. The referendum must be called, advertised and conducted according to the law
23 relating to municipal elections. The registrars shall make a complete list of all the
24 eligible voters of the proposed district as described in this Act. The list prepared by the
25 registrars governs the eligibility of a voter. For the purpose of registration of voters, the
26 registrars of voters must be in session the regular workday preceding the referendum.
27 The subject matter of this Act is reduced to the following question:

28 "Do you favor creating the Hancock Pond Water District and permitting
29 the Hancock Pond Water District to acquire the assets and assume the
30 liabilities of the Madison Water District and the Anson Water District?"

31 The voters shall indicate by a cross or check mark placed against the word "Yes" or
32 "No" their opinion of the same.

33 The results must be declared by the municipal officers of the Town of Madison and
34 the Town of Anson and due certificate of the results filed by the clerk with the Secretary
35 of State.

36 This Act takes effect for all other purposes immediately upon its approval by a
37 majority of the legal voters of each town voting at the referendum. Failure to achieve the
38 necessary approval in any referendum does not prohibit subsequent referenda consistent
39 with this section as long as the referenda are held within 2 years after the effective date of
40 this Act.

41 If, after May 1, 2009 but prior to approval of this Act, a referendum on the question
42 specified in this section is held in accordance with this section and a majority of the legal

1 voters of each town voting at the referendum cast votes in favor of the question and due
2 certificate of the results are filed with the Secretary of State, this Act takes effect when
3 approved.

4 **SUMMARY**

5 This bill creates the Hancock Pond Water District, which is composed of the water
6 districts of the towns of Madison and Anson.