

MAINE STATE LEGISLATURE

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N I N E T Y - S E C O N D L E G I S L A T U R E

Legislative Document

No. 152

H. P. 339

House of Representatives, January 25, 1945.

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Savage of Mt. Desert.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-FIVE

**AN ACT Authorizing the Town of Mount Desert to Improve the Port of
Northeast Harbor and Facilities.**

Emergency preamble. Whereas, the harbor facilities in Northeast Harbor are limited and inadequate to accommodate ships, vessels and yachts, and

Whereas, Northeast Harbor, one of the leading resorts on the Atlantic seaboard is seriously retarded in its development by reason of its limited port facilities and accommodations, and

Whereas, it is urgently necessary to increase depth of the harbor and extend the navigable area, that extensive improvements be carried out, and

Whereas, the federal government has made a survey and provision to make such improvements, and

Whereas, immediate provision in form of bulkheads and facilities for retaining deposit from dredging operations must be had before any government activity, and

Whereas, the reclamation of lands providing for public parks, playgrounds, recreational centers and shore privileges are essential to the health and welfare of the people and the general prosperity of the community, and

Whereas, in order to receive the benefits of any federal aid this act must be passed immediately, and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore

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

Sec. 1. Authorization. The inhabitants of the town of Mount Desert, a municipal corporation in the county of Hancock, is hereby granted the rights, powers and privileges and duties imposed, for the purpose of improving the port of Northeast Harbor and facilities, providing public or common landings, public parks, playgrounds and recreational centers in Northeast Harbor, in said town, all for the benefit of said inhabitants and with the following powers, rights and privileges to be exercised as the same shall be necessary and desirable for the general benefit of the public and of the inhabitants of said town.

I. To acquire by purchase or otherwise real and personal property within said town, about, to and in the lands bordering the shores and waters of Northeast Harbor, including the littoral rights and privileges, easements, rights of ways and facilities, and appurtenances thereto.

II. To reclaim by drainage and/or fill, lands in and about said harbor, including lands within tide waters and areas over which tide waters ebb and flow, which said reclaimed lands shall be the property of the town.

III. To construct and maintain within tide waters and areas over which tide waters ebb and flow and generally in and about said harbor, bulkheads, bridges, wharves, piers, docks, waterways, public or common landings, highways, and appurtenances thereto.

IV. To construct and maintain public parks, playgrounds and recreational centers within the reclaimed area and the appurtenances thereto.

Sec. 2. How managed. All the affairs of the said authority as are herein provided shall be exercised, managed, maintained and carried out by the municipal officers of said town of Mount Desert. Said officers may appoint agents, superintendents, supervisors and assistants or otherwise delegate their powers and duties herein conferred as they deem necessary and required. Municipal officers as used in this act shall be the selectmen of said town.

Sec. 3. Rights, powers and privileges, extended. The rights, powers and privileges herein provided and conferred shall extend to and include the land within tide waters of said harbor to be dredged and/or reclaimed which lie below low water mark and/or below and beyond the shore and littoral rights and privileges of the owners of the uplands.

Sec. 4. Right of eminent domain conferred. The said town shall have the right to take any property, including shore and littoral rights and privileges, by right of eminent domain for purposes of this authority. Said municipal officers shall, within 90 days after voting to take any lands, easements, or shore and littoral rights and privileges, file and cause to be recorded in the registry of deeds for the county of Hancock, a plan and description thereof sufficiently accurate for identification, with a statement of the purposes for which the same is to be taken signed by a majority of said municipal officers and within 30 days thereafter shall publish notice of such taking and filing in some newspaper published in said county, such publication to be continued for 3 weeks successively. Said recording shall operate as a taking of any real estate and of the rights and easements, including shore and littoral rights and privileges therein, and said town, by a majority of its municipal officers, shall first have the right to enter in and upon any lands or real estate, including said shore and littoral areas, to make necessary surveys and location preliminary to such returns. Should said municipal officers, or a majority of them, be unable to agree with the land owner upon the damages to be paid for the land, real estate, or shore and littoral rights and privileges so taken, the land owner or the said municipal officers may, within 3 months after the filing of said plan, petition the county commissioners of said county of Hancock who shall cause such damages to be assessed in the same manner and under the same conditions, limitations, restrictions and rights of appeal as are by law prescribed in cases of damages for the laying out of highways, under the provisions of sections 32 to 39, inclusive, of chapter 79 of the revised statutes of 1944, so far as said law is consistent with the provisions of this act.

The town shall pay all damages sustained by any person, firm, or corporation by the taking of any land, easement, rights and privileges as herein provided.

Sec. 5. How financed. The town of Mount Desert is hereby authorized and empowered to raise, appropriate and expend moneys necessary and required for the carrying out of the purposes of this act. Said town is authorized and empowered to borrow sums of money not exceeding \$50,000 to be expended in the carrying out of the purposes of this act.

Sec. 6. Town may accept deeds and devise. The town may accept, by gift, grant, bequest or devise, moneys or the equivalent, personal property, lands or rights therein, including shore and littoral rights and privileges within the limitations and subject to the provisions and purposes of this act.

Sec. 7. Town to utilize its properties. The town is hereby authorized to use, utilize and occupy its properties situate and being in and about said harbor for the purposes of this act.

Sec. 8. Saving clause. If any portion of this act shall for any reason be held to be unconstitutional or illegal in purpose and application, such decision shall not affect the validity of the remaining portions thereof.

Sec. 9. Repealing clause. All acts and parts of acts inconsistent with this act are hereby repealed.

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when accepted and approved by the town of Mount Desert as hereinafter provided.

Referendum. This act shall not take effect unless accepted and approved by a majority vote of the legal listed voters of the town of Mount Desert present and voting at its regular town meeting, and voting on the acceptance and approval shall be upon the ballot after the list of candidates for town offices at said meeting. Provided, however, that this act may be accepted and approved by a majority vote of the legal listed voters of said town present and voting at a special town meeting duly and legally called for the purpose, and voting upon the acceptance and approval shall be by ballot in form as required for voting upon candidates for town offices and the subject matter of this act upon the ballots at the regular meeting or at said special meeting shall be reduced to the following question: "Shall the act authorizing the town of Mount Desert to improve the port of Northeast Harbor and facilities and provide public or common landings, public parks, playgrounds and recreational centers be accepted?" and the voters shall indicate by a cross placed over the words "Yes" or "No" their opinion of the same, and the ballot at either meeting shall contain such instructions. The results of said voting shall be declared by the municipal officers of said town, and due certificate filed by the town clerk with the secretary of state.