

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

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J.S. McCarthy Company
Augusta, Maine
1993

exercise of the right of eminent domain, which right is expressly delegated to the Eastport Port Authority, and hold the real property and rights and easements ~~therein to the real property~~ as the directors may from time to time consider necessary for the purpose of constructing and maintaining the Eastport Port Authority piers, docks and warehouses, highways and other port facilities, and ~~shall further~~ have the right to construct suitable buildings, filling stations, restaurants or ~~other structures~~ engage in other business opportunities that are not in direct competition with established businesses, and have the authority to ~~least lease~~ the same, upon the terms as the directors or a majority ~~thereof~~ of the directors may determine to be in the best interests of the authority, the proceeds from leases to accrue to the credit of the Eastport Port Authority. These wharves, buildings and property ~~shall be~~ are exempt from taxation by the City of Eastport, ~~provided that except that~~ this exemption ~~shall~~ does not exempt any lessee or person in possession, other than the port authority, from taxes or assessments payable under the Maine Revised Statutes, Title 36, section 551. The Port Authority has the right to acquire property without the approval of the city council, except that the property so acquired may not be exempted from taxation. The authority shall render annually, at the end of the fiscal year, ~~an annual report to the city council, showing all transactions and balances financial reports, together with and recommendations and plans for the improvement and operation of the public landing and warehousing facilities.~~ The board of directors ~~shall have~~ has the power to establish bylaws and all rules and regulations governing the operation and maintenance of ~~the public landing and facilities under the control of the~~ Eastport Port Authority; charge such fees as may, in their judgment, be necessary for parking, docking and storage privileges; contract for the construction of the wharf or wharves, warehouse or warehouses, and borrow money for these purposes; arrange for its financing; and provide for its protection by insurance against damage by fire, water or wind and for any other casualty which the directors wish to insure against, and for liability against injury to persons and property. The directors may accept federal, state and private grants and contributions for the purposes of this Act and may enter into partnerships, joint ventures or other business relationships, either directly or through an affiliate corporation owned by the authority.

See title page for effective date.

CHAPTER 83

H.P. 1269 - L.D. 1696

An Act to Create the Mount Desert Water District

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

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

Whereas, the residents of the Town of Mount Desert are in immediate need of forming a quasi-municipal entity to supply potable water; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning 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. Territorial limits; corporate name; purposes. That part of the Town of Mount Desert in the County of Hancock that lies south of 44° 20' 33" north latitude and between the meridians of 68° 13' 5" west longitude and 68° 18' 33" west longitude and north of the seaward line of the Town of Mount Desert and its inhabitants constitute a quasi-municipal corporation under the name of "Mount Desert Water District," referred to in this Act as the "district," for the purpose of supplying the town and the inhabitants and others of the district with potable water for domestic, sanitary, commercial, industrial, agricultural and municipal purposes.

Sec. 2. Powers of district. The district, for the purposes of its incorporation, may take, collect, store, flow, use, divert, distribute and convey to the district, or any part of the district, water from any source approved by the Department of Human Services, natural or artificial, within the area of the Town of Mount Desert and from any other source from which the Northeast Harbor Water Company or the Seal Harbor Water Company may take water on the effective date of this Act. It may also locate, construct and maintain aqueducts, pipes, conduits, dams, wells,

reservoirs, standpipes, hydrants, pumping stations and other necessary structures and equipment for those purposes and do anything necessary to furnish water for public purposes and for the public health, comfort and convenience of the inhabitants and others of the district, or to contract to do any and all of the foregoing things.

All incidental powers, rights and privileges necessary to the accomplishment of the objectives set forth in this Act are granted to the district created by this Act.

Notwithstanding section 1 and other provisions of this section, the district may not provide service to any person or business within the territory served by the Northeast Harbor Water Company unless the district acquires, pursuant to section 13 of this Act, the plants, properties, franchises, rights and privileges owned by the Northeast Harbor Water Company or unless the provision of service is approved by the Public Utilities Commission pursuant to the Maine Revised Statutes, Title 35-A, section 2102. Notwithstanding section 1 and other provisions of this section, the district may not provide service to any person or business within the territory served by the Seal Harbor Water Company unless the district acquires, pursuant to section 13 of this Act, the plants, properties, franchises, rights and privileges owned by the Seal Harbor Water Company or unless the provision of service is approved by the Public Utilities Commission pursuant to Title 35-A, section 2102.

Sec. 3. Authorized to lay mains, pipes, conduits and other water conveyances through public ways and across private lands. The district may lay in, along, under and through the streets, roads, ways, highways, bridges, tidal waters, lakes, ponds, rivers and water courses in the Town of Mount Desert and across private lands in the Town of Mount Desert and maintain, repair and replace all such pipes, mains, conduits, aqueducts and fixtures and appurtenances as may be necessary and convenient for its corporate purposes and, whenever the district lays any pipes, mains, conduits, aqueducts and fixtures or appurtenances in any street, road, way or highway, it shall cause the same to be done with as little obstruction as practicable to the public travel and at its own expense, without unnecessary delay, shall cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 4. Authorized to erect dams and reservoirs; to cross navigable waters; to supply water to utilities. The district, for the purposes of its incorporation, may erect and maintain all dams, reservoirs and structures necessary and convenient for its corporate purposes. The district may lay, construct and maintain its pipes and fixtures in, over and under navigable waters and build and maintain structures

for the pipes and fixtures, subject to the laws of the United States. The district may supply water to any public utility now supplying water in Hancock County, subject to the consent of the Public Utilities Commission.

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

Sec. 6. Authority to acquire property; rights of eminent domain. The district, for the purposes of its incorporation, may take and hold, for public uses, real estate and personal estate and any interest in real estate and personal estate necessary or convenient for those purposes, by purchase, lease or otherwise and may exercise the right of eminent domain as provided in this Act, to acquire for those purposes any land or interest in land or water rights necessary for erecting and maintaining dams, plants and works, for flowage, power, pumping and supplying water through its mains; for reservoirs, preserving the purity of the water and watershed; for laying and maintaining aqueducts and other structures; for taking, distributing, discharging and disposing of water; and for rights-of-way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

This section may not be construed as authorizing the district to take by right of eminent domain any of the property or facilities of any other public utility used, or acquired for future use by the owner of that property or those facilities, in the performance of a public duty, unless expressly authorized to do so by this section or by subsequent act of the Legislature or as provided in section 5 or 13.

Sec. 7. Procedure in exercising of eminent domain. Except as specifically provided in section 13, the district may exercise the right of eminent domain granted under section 6 in accordance with this section. The district, in exercising, from time to time, any right of eminent domain in the taking of land, interests in the land or water rights, shall file in the office of the county commissioners of Hancock County and record in the Hancock County Registry of Deeds plans of the location of all such property to be taken, with an appropriate description and the names of the owners, if known. Notice of the filing must be

sent by mail to the owners at the address appearing on the tax records of the municipality in which the land is located. When for any reason the district fails to acquire the property it is authorized to take, and which is described in that location, or if the location recorded is defective or uncertain, it may, at any time, correct and perfect that location and file a new description, and in such case the district is liable for damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district is not liable for any acts that would have been justified if the original taking had been lawful. Entry may not be made on any private lands, except to make surveys, until the expiration of 10 days from that filing, at which time possession may be had of all lands, interests in the lands or water rights so taken, but title does not vest in the district until payment has been made.

Sec. 8. Adjustment of damages; procedure as in laying out of highways. If any person sustaining damages by any taking pursuant to the right of eminent domain does not agree with the district upon the sum to be paid for the taking, either party, upon petition to the county commissioners of Hancock County, may have the damages assessed by them. The procedure and all subsequent proceedings and right of appeal are under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

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

1. First board. The municipal officers of the Town of Mount Desert shall appoint the first board of trustees. Two trustees 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 meeting the initial trustees shall determine by agreement, or failing to agree they shall determine by lot, the term of office of each trustee. Vacancies are filled pursuant to subsection 4.

2. Organization; conduct of business. Organization and powers of the board of trustees must be in accordance with the Maine Revised Statutes, Title 35-A, chapter 63.

All decisions of the board of trustees must be by a majority of those present and voting. A quorum of the board of trustees is 3 trustees.

Trustees are entitled to compensation in accordance with Title 35-A, chapter 63.

3. Bylaws. The trustees may adopt and establish such bylaws as are necessary for the proper management of the affairs of the district.

4. Vacancy. Whenever the term of office of a trustee expires, the trustee's successor must be elected at large by a plurality vote by the inhabitants of the district. For the purpose of election, a special election must be called and held on the first Monday in May or on such other date in May as the trustees establish, the election to be called by the trustees of the district in the same manner as town meetings are called and for this purpose the trustees are vested with the powers of municipal officers of towns. The trustee so elected shall serve the full term of 3 years. If any vacancy arises in the membership of the board of trustees, it must be filled in like manner for the unexpired term by a special election to be called by the trustees of the district. When any trustee ceases to be a resident of the district, the trustee shall vacate the office of trustee and the vacancy must be filled as provided in this section. All trustees are eligible for reelection, but a person who is a municipal officer in the Town of Mount Desert is not eligible for nomination or election as trustee.

The trustees may procure an office and incur such expenses as may be necessary.

The trustees shall appoint a registrar of voters for the district, who may also be the registrar of voters for the Town of Mount Desert, and fix the registrar's salary. It is the registrar's duty to make and keep a complete list of all the eligible voters of the district. The list prepared by the registrar, as provided by the laws of the State, governs the eligibility of any voter. In determining the eligible voters of the district, the registrar of voters shall exclude from that list and from all checklists the legal voters who are resident outside the territorial limits of the district as defined in this Act. All warrants issued for elections by the trustees must be varied accordingly to show that only the voters resident within the territorial limits of the district are entitled to vote.

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

Sec. 11. District and towns authorized to make and assume contracts. The district, through its trustees, in order to carry out the objectives set forth in this Act, may contract with persons, districts, municipalities, utilities or corporations. The district may contract with the Town of Mount Desert and the

town may contract with the district for the supply of water for municipal purposes.

Sec. 12. Authorized to receive government aid; borrow money; issue bonds and notes. For accomplishing the purposes of this Act, the district, through its trustees, without vote of the inhabitants, may receive state and federal aid or grants, borrow money temporarily and issue for the money its negotiable notes for the purpose of renewing and refunding the indebtedness so created, for paying any necessary expenses and liabilities incurred under this Act, including organizational and other necessary expenses and liabilities, whether incurred by the district or the Town of Mount Desert, the district being authorized to reimburse the Town of Mount Desert for any such expense incurred by the town and in acquiring properties, paying damages, laying pipes, mains, aqueducts and conduits, constructing, maintaining and operating a water plant or system and making renewals, additions, extensions and improvements to the water plant or system and to cover associated interest payments. The district, through its trustees, may also issue, from time to time, in accordance with the Maine Revised Statutes, Title 35-A, chapter 63, bonds, notes or other evidences of indebtedness of the district in such amount or amounts, bearing interest at such rate or rates, selling at par or at a discount or a premium, to be sold in such manner, at public or private sale, and having such other terms and provisions as the trustees determine, except that loans running for one year or less do not require the approval of the Public Utilities Commission.

Bonds, notes and evidences of indebtedness of the district may be issued to mature serially or made to run for a term of years as the trustees determine. Bonds, notes or evidences of indebtedness may be issued with or without provisions for calling the bonds, notes or evidences of indebtedness prior to maturity and, if callable, may be made callable at par or at such premium as the trustees determine. All bonds, notes or other evidences of indebtedness must have inscribed upon their face the words "Mount Desert Water District" and be signed by the treasurer and countersigned by the chair of the board of trustees of the district. If coupon bonds are issued, the interest coupon attached to the coupon bonds must bear the facsimile signature of the treasurer.

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

The district may refund and reissue, from time to time, in one or in separate series, its bonds, notes and other evidences of indebtedness, and each authorized issue constitutes a separate loan. All

bonds, notes and evidences of indebtedness issued by the district are legal investments for savings banks in the State and are exempt from state income tax.

Sec. 13. Authorized to acquire property and franchises of Northeast Harbor Water Company and Seal Harbor Water Company. The district, through its trustees, may acquire by purchase all or part of the plants, properties, franchises, rights and privileges owned by the Northeast Harbor Water Company and the Seal Harbor Water Company located within the Town of Mount Desert, including all lands, waters, water rights, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the area of the district. The district may acquire by the exercise of the right of eminent domain, a right expressly delegated to the district for that purpose, all or part of the plants, properties, franchises, rights and privileges except cash assets and accounts receivable, owned by the Northeast Harbor Water Company and the Seal Harbor Water Company, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances used or usable in supplying water in the area of the district, and if and when so acquired, the district, in addition to the powers conferred by this Act, may exercise all rights, privileges and franchises of the Northeast Harbor Water Company and of the Seal Harbor Water Company.

In exercising the right of eminent domain under this section, the trustees shall file with the district clerk a condemnation order that includes a detailed description of the property interests to be taken, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the trustees to be just compensation for the property or interest therein taken. The trustees then shall serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded and record a certified copy of the condemnation order in the Hancock County Registry of Deeds. In the event of multiple ownership, the check may be served on any one of the owners. Title passes to the district upon service of the order of condemnation and check or upon recordation in accordance with this Act, whichever occurs first. Acceptance and negotiation of the check do not bar an appeal under this Act.

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this section may, within 60 days after service of the condemnation order and check, appeal to the Superior Court of Hancock County. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or

by a referee or referees, and shall render judgment for just compensation, with interest when interest is due, and for costs in favor of the party entitled thereto. Appeal from the decision of the Superior Court may be had to the Law Court, as in other civil actions.

Sec. 14. Rates. The rates established pursuant to this section must be sufficient to provide revenue for the purposes of this Act and for all other purposes of the district, without the need for any financial assistance from the Town of Mount Desert, other than the normal payment of water charges for services rendered and the loan or loans for initial funds as set forth in section 12. Individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer or other designated officer of the district the rates established by the board of trustees for the water used by them. The rates must be established in accordance with the Maine Revised Statutes, Title 35-A, chapter 61, to provide for the purposes set forth therein.

Sec. 15. Existing laws not affected; rights conferred subject to provisions of law. Nothing contained in this Act is intended to repeal, or may be construed as repealing, the whole or any part of any existing law, and all the rights and duties mentioned in this Act must be exercised and performed in accordance with all the applicable provisions of and amendatory acts to the Maine Revised Statutes, Title 35-A to the extent that that Title and its amendments affect the operations of the district.

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

Sec. 17. Emergency clause; referendum; effective date. In view of the emergency cited in the preamble, this Act takes effect when approved but only for the purposes of permitting its submission to the legal voters of the Town of Mount Desert at an election called for that purpose and held by December 31, 1994. The election must be called, advertised and conducted according to the law relating to municipal elections, except that the registrar of voters is not required to prepare or the clerk to post a new list of voters and, for this purpose, the registrar of voters must be in session the 3 secular days preceding the election, of which the first 2 days must be devoted to registration of the voters and the last day to verification of the list and completion of the records of these sessions by the registrar. The subject matter of this Act is reduced to the following question:

"Do you favor creating the Mount Desert Water District?"

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

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

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

Effective pending referendum.

CHAPTER 84

S.P. 605 - L.D. 1703

An Act Concerning the Payment of Medical Expenses in Controverted Workers' Compensation Cases

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

Sec. 1. Report. The Superintendent of Insurance shall report to the joint standing committee of the Legislature having jurisdiction over banking and insurance matters on or before January 15, 1995 regarding the payment of medical expenses in controverted workers' compensation cases. The report must include controverted workers' compensation cases in which the injured person claims health care benefits under a health benefits plan offered through the same employer and under a health benefits plan that is not offered through the same employer and must include options for legislation. The report must include information on liabilities between different insurance companies and options for legislation.

See title page for effective date.

CHAPTER 85

H.P. 1336 - L.D. 1799

An Act to Expand the Powers of the Great Salt Bay Sanitary District

Mandate preamble. This measure requires one or more local units of government to expand or