

APPROVED

CHAPTER

APR 27 '83

25

STATE OF MAINE

BY GOVERNOR

B & S LAW

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-THREE

H.P. 348 - L.D. 407

AN ACT Creating the Passamaquoddy  
Water District.

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

Whereas, the present water system is inadequate and in need of immediate improvement and repair to protect the quality of the water service and the health and well-being of the customers of the Eastport Water Company; and

Whereas, an adequate supply of pure water is essential to the health and well-being of the customers of the Eastport Water Company; and

Whereas, it is desirable that a public water district be formed to be empowered to take over the Eastport Water Company forthwith in order to supply water service to the people of the City of Eastport and to the inhabitants of the Town of Perry and to the Pleasant Point Passamaquoddy Indian Reservation; and

Whereas, it is vital that this be done at once for the benefit of the customers of the present water system; 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 preser-

vation of the public peace, health and safety; now, therefore,

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

Sec. 1. Incorporated; territorial limits; corporate name; purposes. Subject to section 20, the inhabitants and territory within the Passamaquoddy Indian Reservation located at Pleasant Point in the County of Washington shall be and hereby are constituted a nonprofit public municipal corporation under the name of "Passamaquoddy Water District" for the purpose of supplying the inhabitants of that district and of the City of Eastport and the Town of Perry and others including the present customers of Eastport Water Company with pure water for domestic, sanitary, commercial, manufacturing and municipal purposes.

Sec. 2. Source of supply. The water district, for the purposes of its incorporation, is authorized to take, collect, store, hold, divert, use, flow, detain and distribute water from any lake, pond, stream or river and from any surface or underground brook, spring or vein of water in the reservation, and from any other source from which the Eastport Water Company is now authorized to take water, including sources outside of the reservation.

Sec. 3. Right of eminent domain conferred. The district, for the purposes of its incorporation, is authorized to take and hold, as for public uses, by purchase, gift or by exercise of the right of eminent domain, which right is expressly delegated to the water district for that purpose, any lands or interests therein or water rights necessary for erecting and maintaining dams, for flowage, for power, for pumping its water supply through its mains, for reservoirs and standpipes, for preserving the purity of the water and watershed, for laying and maintaining aqueducts, mains 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, standpipes, mains, aqueducts, structures and lands. Nothing contained in this Act may be construed as authorizing

the water district to take by right of eminent domain any of the property or facilities of any other public utility or district used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized to take that property or facility by this Act or by subsequent Act of the Legislature, or as provided in section 7, and nothing in this Act may authorize any taking inconsistent with the Maine Revised Statutes, Title 30, section 6205, subsection 3, or the United States Code, Title 25, Section 1724(1). The right of eminent domain conferred by this Act shall be the same as the Eastport Water Company has on the effective date of this Act.

Sec. 4. Authorized to lay pipes, public ways and across private lands. The district is authorized to lay in and through the streets, roads, ways and highways within the district and any city or town which the Eastport Water Company is serving or authorized to serve and across private lands therein, and to maintain and replace all such pipes, aqueducts, mains and fixtures as may be necessary, and may excavate through any lands when necessary and convenient for its corporate purposes; and whenever the district shall lay any pipes, aqueducts or mains 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 shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Authorized to erect and maintain dams, reservoirs, etc. The district is authorized, for the purposes of its incorporation, to erect and maintain all dams, pumping stations, with all necessary appliances required therefor, reservoirs, standpipes and structures necessary and convenient for its corporate purposes.

Sec. 6. Procedure in exercising rights of eminent domain; assessment of damages; appeal procedure. The water district shall be liable for all damage that shall be sustained by any person, corporation, or governmental entity in his or its property by the taking of any land or interest therein whatso-

ever, for water, or by flowage, or by excavating through any land for the purpose of laying pipes, aqueducts or mains, building dams or constructing reservoirs or standpipes.

In exercising any right of eminent domain conferred upon it by law, from time to time, in the taking of lands or interests therein, or water rights, the district shall file in the office of the county commissioners of Washington County and record in the registry of deeds in the county plans of the location of all lands or interests therein or water rights, with an appropriate description and the names of the owners thereof, if known. Notice of the filing shall 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 authorized to be taken, and which is described in that location, or the location recorded is defective or uncertain, it may, at any time, correct and perfect the location and file a new description thereof, and in that case the district may be liable in 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 shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon possession may be had of all the lands or interests therein or water rights so taken, but title shall not vest in the district until payment therefor.

If any person or corporation sustaining damages by any taking as set out in this section and the water district shall not mutually agree upon the sum to be paid therefor, either party, upon petition to the county commissioners of Washington County, may have the damages assessed by them; and the procedure and all subsequent proceedings and right of appeal thereon shall be had 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 town ways.

Sec. 7. Procedures in crossing a public utility. In case of a crossing of any land, interest in land or water right owned by a company operating any public utility, for any of the purposes contained in this Act, unless written consent is given by such company as to place, manner and conditions of the crossing within 30 days after the consent is requested in writing 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 company shall be done under the supervision and to the satisfaction of the company, or as prescribed by the Public Utilities Commission, but at the expense of the district.

Sec. 8. Initial appointed trustees. Following acceptance of this Act, the Pleasant Point Passamaquoddy Reservation Tribal Council, with the advice and consent of the Governor of the Pleasant Point Passamaquoddy Reservation Tribal Council shall appoint a board of trustees comprised of 3 members, each a resident of the district. The sole function of these trustees shall be to set the necessary machinery in motion and assist in the election of the board of trustees, as set forth in section 9.

Sec. 9. Board of trustees; election; vacancy. All the affairs of the district shall be managed by a board of trustees comprised of 5 members of which 3 members, each a resident of the district, shall be elected by Australian ballot at a special district meeting, as soon as possible, following the acceptance of this Act. Additionally, one trustee shall be elected from the City of Eastport and one trustee shall be elected from the Town of Perry, following the procedures for municipal elections; except that, in the event no one volunteers to run for the office of trustee in either of these municipalities, the municipal officers shall appoint a trustee to serve for a normal term.

The terms of the members of the board shall be as follows: One elected member and one appointed member shall serve for one year from date of the first election following acceptance of this Act; 2 members, one elected and one appointed shall serve for 2 years

from the date of the first election following the acceptance; the 3rd elected member shall serve for 3 years from the date of the first election following the acceptance. Following the expiration of each of the terms of the first elected and appointed trustees of the district, their successors shall be elected or appointed for 3-year terms. All trustees shall serve until their successors are elected, appointed and qualified. Trustees shall be eligible for reelection and reappointment.

When any trustee ceases to be a resident in the district or in the municipality he represents, he vacates the office of trustee. Vacancies in the office of elected trustees shall be filled by special district election, except that a vacancy occurring within 6 months of the expiration of an elected trustee's term of office may be filled by appointment of a successor residing in the district to serve the unexpired portion of the term in which the vacancy occurred. Vacancies in elected trustees shall be filled by the same procedure as specified in section 8. Appointments in the office of appointed trustee where a vacancy occurs shall be made by the respective municipal officers.

Within one week after the original election and appointments and thereafter within one week after each annual election, the trustees shall meet for the purpose of electing a chairman, treasurer and clerk from among them to serve for the ensuing year, and until their successors are elected and qualified. The trustees, from time to time, may choose and employ and fix the compensation of any other necessary officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in the sum and which surety is approved by the trustees. The cost of the bond shall be paid by the district. At its original meeting the trustees shall, in addition to the foregoing, adopt a corporate seal, elect a treasurer who may or may not be a trustee. The trustees may adopt and establish bylaws consistent with the laws of this State necessary for their own convenience and the proper management of the affairs of the district and perform any other acts within the powers delegated to them by law.

The trustees shall be sworn to the faithful performance of their duties, which shall include the duties of any member who serves as clerk or as clerk pro tem. The trustees shall make and publish an annual report, including therein a report of the treasurer. The trustees, including the initial appointed trustees, shall have the same powers and perform the same duties as otherwise exercised and performed by the selectmen or towns for the calling and holding of district elections and district meetings, and for the correction and preparation of lists of persons qualified to vote in the district. All meetings of the district shall be presided over by the chairman of the board of trustees who shall have the same authority as moderators of town meetings. District meetings shall be conducted in the same manner as town meetings.

Members of the board of trustees shall be eligible for any office under the board. All of the trustees shall receive compensation as recommended by them and approved by a majority of the Pleasant Point Passamaquoddy Tribal Council. Certification of the compensation shall be recorded with the office of the Secretary of State and recorded in the bylaws of the district. The respective compensation for duties as trustees shall be on the basis of such specified amount as may be specified in the bylaws, for each meeting actually attended, and reimbursement for travel and expenses, with the total not to exceed such specific amount as may be specified in the bylaws.

Sec. 10. Annual meeting of the district. After the acceptance of this Act, and the organization of the board of trustees as provided in this Act, the annual meeting of the district for the election of trustees shall be held on the first Monday of each April, at such hour and place as may be designated by resolution of the board of trustees as provided in the bylaws. Notice thereof shall be as provided in the Maine Revised Statutes Annotated for town meetings.

Sec. 11. Authorized to borrow money to issue bonds and notes. The district, through its trustees and without vote of its inhabitants, unless required

by this Act, is authorized to issue from time to time bonds or notes of the district to pay for the costs of capital outlay incurred by the district in connection with accomplishing any of the purposes set forth in this Act; for paying any necessary expenses and liabilities incurred under this Act, including the expenses incurred in the creation of the district, in securing sources of supply, taking water, water rights and land, paying damages, taking rights-of-way or other interests in real estate, by purchase or otherwise, laying pipes, aqueducts and mains, constructing, installing, maintaining and operating reservoirs, standpipes, dams, pumping stations and whatever equipment may be necessary or incidental to the construction and installation of the water system, and making renewals of or extensions, additions and improvements to the same, the establishment of a reasonable reserve for future payments of debt service, and for interest on bonds or notes during the period of construction of items of capital outlay to be paid from the proceeds of the bonds or notes and for a period not exceeding one year thereafter. For the purpose of the preceding sentence, a reasonable reserve for future payment of debt service shall mean a reserve, the amount of which shall not in the case of an issue of serial bonds or notes exceed the largest amount of principal and interest payable in any year, except the last in which that issue of bonds or notes is outstanding and in the case of any other issue of bonds or notes exceed the lesser of the largest amount of any mandatory sinking fund payment payable on account of the particular issue of bonds or notes in any year, except the last in which that issue of bonds or notes is outstanding, or 5% of the original principal amount of that issue plus in each case the largest amount of interest payable on that issue of bonds or notes in any year.

The bonds or notes shall be issued in such amount or amounts as the district, acting through its trustees and without vote of its inhabitants, unless required by this Act, may determine. The bonds or notes may be issued to mature serially, in annual installments of principal, no one of which may exceed by more than 25% any earlier installment and the first of which shall be payable not later than 3 years from the date of the bonds or notes and the

last of which shall be payable not later than 40 years from the date. The bonds or notes may also be issued for a term of years not exceeding 40 years or in a combination to mature serially and for a term of years not exceeding 40 years, all as the trustees shall determine. The bonds may be callable with or without premium and shall contain the terms and conditions, be sold in that manner, at public or private sale, with or without provisions for prepayment in advance of maturity, at par, at a discount or at a premium, all as the trustees shall determine. The trustees may determine the selling price and rate or rates of interest to be paid on bonds or notes and, if specifically authorized by the trustees, the rate of interest may vary.

If the trustees vote to issue bonds or notes, the trustees may authorize the issuance, in the name of the district, of temporary notes for a period not to exceed 5 years in anticipation of the money to be received from the sale of these bonds or notes, but in no event later than one year after the estimated date of completion of construction of items of capital outlay to be paid from the proceeds of such temporary notes as determined by the trustees. The time within which the temporary notes shall be payable need not be included in determining the period for which bonds or notes may be issued.

The district, through its trustees and without vote of the inhabitants, may also issue from time to time notes in anticipation of revenues to be collected or received in any year or in anticipation of federal or state grants or other aid. Notes in anticipation of revenue shall mature no later than one year from their respective dates, provided that the notes issued for less than one year may be renewed from time to time by the issue of other notes, and provided that the period from the date of an original note to the maturity of any note issued to renew or pay the same shall not exceed one year. Notes in anticipation of federal or state grants or other aid and any renewals thereof shall mature no later than 6 months following the expected date of receipt of the grants or aid and shall not be issued unless the trustees shall first determine that the grants or aid remain payable to the district.

The district may refund from time to time in one or in separate series its bonds, notes or other evidences of indebtedness, provided, that pending the payment of the refunded bonds or notes, the proceeds of the refunding bonds or notes shall be held in trust and invested only in securities issued or guaranteed by the United States of America which mature not later than the maturity or redemption date of the bonds or notes to be refunded. All bonds shall have inscribed upon their face "Passamaquoddy Water District" and "Water Bond" and shall be executed as the trustees shall determine.

At the discretion of the trustees, any issue of bonds or notes may be secured by and between the district and a corporate trustee, which may be any bank or trust company authorized to exercise corporate trust powers.

The resolution authorizing the issuance of the bonds or notes of the trust agreement may pledge or assign, in whole or in part, the revenues and other moneys held or to be received by the district and any accounts and contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the district, and the proceeds thereof, and may also convey or mortgage the water system or any other related water properties of the district. The resolution may also contain such provisions for protecting and enforcing the rights and remedies of the bond or note holders as may be reasonable and proper and not in violation of law, including, but not limited to, covenants setting forth the duties of the district and the board of trustees in relation to the acquisition, construction, reconstruction, improvement, repair, maintenance, operation and insurance of its water system or any of its other properties, the fixing and revising of rates, fees and charges, the application of the proceeds of bonds, the custody, safeguarding and application of revenues, defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities, the establishment of reserves and the making and amending of contracts. The rates, fees and charges shall be subject to the approval of the Public Utilities Commission, as required by Title 35.

The resolution or trust agreement may set forth the rights and remedies of the bond or note holders and of the trustee, if any, and may restrict the individual right of action by bond or note holders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations. In addition, the resolution or trust agreement may contain such other provisions as the board of trustees may deem reasonable and proper for the security of the bond or note holders. All expenses incurred in carrying out the resolution or trust agreement may be treated as a part of the cost of operation of the district. The pledge by any resolution or trust agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the United States Uniform Commercial Code from the time when the pledge is made. All revenues, moneys, rights and proceeds so pledged and thereafter received by the district shall be subject to the lien of the pledge without any physical delivery or segregation thereof or further action under the United States Uniform Commercial Code or otherwise, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district irrespective of whether those parties have notice thereof.

The resolution authorizing the issuance of bonds or notes under this Act, or any trust agreement securing those bonds, may provide that all or a sufficient amount of revenues, after providing for the payment of the costs of repair, maintenance and operation and reserves therefor as may be provided in the resolution or trust agreement, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement and deposited in the credit of a fund for the payment of the interest on and the principal of bonds or notes issued under this Act as the same shall become due, and the redemption price or purchase price of bonds or notes retired by call or purchase. The use and disposition of moneys to the credit of the fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or notes or in the trust agreement securing the bonds or notes and, except as may otherwise be provided in the resolution

or trust agreement, the fund shall be a fund for the benefit of all bonds or notes without distinction or priority of one over another.

In the event that the trustees vote to authorize bonds or notes, other than temporary notes in anticipation of bonds or notes, in anticipation of revenue or in anticipation of federal or state grants or other aid, the estimated amount of which, singly or in the aggregate included in any one financing, is \$150,000 or more adjusted, relative to 1981 as the base year according to the annual Consumer Price Index, as defined in the Maine Revised Statutes, Title 5, section 1001, subsection 6-A, the trustees shall provide notice to the ratepayers of the district of the proposed bond or note issue and the purposes for which the debt is being issued. The notice shall be published at least once in a newspaper having general circulation in the district, the City of Eastport and Town of Perry. The trustees shall also give notice to each ratepayer by mail.

No debt may be incurred under the vote of the trustees until the expiration of 7 full days following the date on which the notice was first published and mailed. Prior to the expiration of the period, the trustees shall call a special district meeting for the purpose of permitting the collection of testimony from the public concerning the amount of debt so authorized.

Except for indebtedness to fund projects specifically mandated by the State Government and Federal Government, for debts in excess of the amount specified in this section, if requested by petition of not less than 50 voters of the district or 5% of the voters, whichever is greater; or of not less than 50 ratepayers of the district or 5% of the ratepayers, whichever is greater, filed with the clerk of the district on or before the date of the meeting, the meeting shall express approval or disapproval of the amount of debt so authorized. If a majority of voters present and voting expresses disapproval of the amount of debt authorized by the trustees, the debt shall not be incurred and the vote of the trustees authorizing it shall be void and of no effect. Nothing contained in this Act may prevent

the resubmission of the same or similar proposal after the disapproval, but that resubmission shall follow the same procedures and be subject to the same rights as provided in this section.

All bonds, notes and evidences of indebtedness so issued by the district shall be legal obligations of the district, and shall be payable solely from the revenues and other funds or property of the district. The Maine Revised Statutes, Title 30, section 5053, shall not be applicable to the district. Excepting property of the district itself, neither the personal property of the residents, nor the real estate within the district, nor the property or assets of the Passamaquoddy Indian Tribe, may be taken to pay any debt due from the body corporate.

All bonds, notes and evidences of indebtedness issued by the district pursuant to this Act shall be legal investments for savings banks in this State and, together with the interest thereon, shall be exempt from all Maine taxes.

Sec. 12. Governmental grants and loans. The district is authorized to enter into agreements with federal, state and local governments or any agency thereof, or any corporation, commission or board authorized by federal, state or local governments to grant or loan money to or otherwise assist in the financing of projects for accomplishing any of the purposes of this Act, and to accept grants and borrow money from any such government, agency, corporation, commission or board as may be necessary or desirable for the purposes of this Act.

Sec. 13. Contracts for supply of water. The district, through its trustees, is authorized to contract with persons, firms, associations, districts, authorities and corporations, including the City of Eastport and Town of Perry, for the purpose of supplying water as contemplated by this Act, and that city and town are authorized to contract with it, for the supply of water for municipal purposes.

Sec. 14. Authority to purchase the property of Eastport Water Company. The Passamaquoddy Water District may acquire by purchase the entire plant, prop-

erty, franchises, rights and privileges of the Eastport Water Company located in or serving the City of Eastport, Town of Perry and Pleasant Point Reservation, including all lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tools and all apparatus and appliances owned by the company, whether the record title thereto is or is not in the Eastport Water Company, and provided that any purchase is accomplished in accordance with the United States Code, Title 25, Section 1724(g). The company is authorized to sell, transfer and convey its franchises and property to the water district.

Sec. 15. Property not tax exempt. The property of the district shall not be exempt from all taxation in the City of Eastport and the Town of Perry or in any other city or town where any part of its plant may be located.

Sec. 16. Water rates. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of the district the rates established by the board of trustees for the water used by them; and the rates for water so supplied shall be uniform within the territory supplied by the district whenever the installation and maintenance of mains and the cost of service is substantially uniform, but nothing in this Act may preclude the district from establishing higher rates than the regular rates in sections where for any reason the cost of construction and maintenance of the costs of service exceeds the average, but these higher rates shall be uniform throughout the sections where they apply. The rates shall be so established as to provide revenue for the following purposes:

1. To pay the current expenses for operating and maintaining the water system and to provide for normal renewals and replacements;
2. To provide for the payment of the interest on the indebtedness created or assumed by the district and, to any extent not otherwise provided for, for the payment of the principal of the indebtedness;
3. To provide each year a sum equal to not less

than 2% nor more than 10% of the original principal amount of each issue of bonds, notes or other indebtedness created or assumed by the district as long as any part of the original principal amount remains outstanding, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of the indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in such securities as savings banks are allowed to hold. In lieu of the establishment of a sinking fund for the payment of indebtedness, the district may provide for the issuance of serial bonds or notes as authorized by section 11;

4. To provide, in accordance with Title 35, section 3311, up to a 5% addition to yearly revenues over what is required to operate the district to provide for a contingency reserve fund; and

5. If any surplus remains at the end of the year, it may be transferred to the sinking fund.

Sec. 17. Incidental rights and privileges. All incidental rights, powers and privileges necessary to the accomplishment of the main object set forth in this Act are granted to the public municipal corporation created in this Act.

Sec. 18. Existing statutes 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 statute and all the rights and duties mentioned in this Act shall be exercised and performed in accordance with all the applicable provisions of the Maine Revised Statutes, Title 35, and all acts amendatory thereof or additional thereto which confers the jurisdiction of the Public Utilities Commission over the district.

Sec. 19. Act inoperative, void on failure to acquire Eastport Water Company. If the water district shall fail to purchase the plant, property, franchises, rights and privileges owned by the Eastport Water Company and used or usable in supplying water to the City of Eastport, Town of Perry and Pleasant

Point Indian Reservation before November 1, 1984, then this Act shall on November 1, 1984 be inoperative and void.

Sec. 20. Referendum; effective date. Unless accepted by a majority vote of the legal voters within the proposed water district voting at an election called and held for the purpose by the Tribal Council of the Passamaquoddy Pleasant Point Reservation, this Act shall become inoperative. That special election shall be called, advertised and conducted according to the law relating to municipal elections, provided that a new list of voters need not be prepared and posted, and for the purpose of registration, the board of voter registration shall be in session on the secular day next preceding the special election. The Tribal Clerk shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question:

"Shall the Passamaquoddy Water District be created?"

The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The result shall be declared by the Tribal Council and due certificates thereof filed by the Tribal Clerk with the Secretary of State.

This Act shall take effect for all purposes immediately upon its acceptance by a majority of the legal voters voting in the election, provided that the total number of votes cast for and against the acceptance of this Act equals or exceeds 20% of the total vote for candidates for Tribal Governor cast in the district at the next previous tribal gubernatorial election, but failure of approval by the necessary percentage of voters at any election shall not prevent subsequent elections to be held for the purpose of voting on the acceptance or rejection of this Act, within the time limitation of section 19.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, so far as necessary to empower the calling and holding of the election described in section 20.

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In House of Representatives, ..... 1983

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 1983

Read twice and passed to be enacted.

..... President

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Approved ..... 1983

..... Governor

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(EMERGENCY)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2136

H.P. 1614

House of Representatives, February 27, 1984

Approved for introduction by the Legislative Council pursuant to Joint Rule 26.

Referred to the Committee on Public Utilities. Ordered printed and sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Representative Vose of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Amend the Charter of the  
Passamaquoddy Water District.

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

Whereas, the first annual meeting of the newly-formed Passamaquoddy Water District will be in April 1984; and

Whereas, some aspects of the district charter require clarification; and

Whereas, the district serves an essential purpose, namely, providing an adequate supply of pure water; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following  
2 legislation as immediately necessary for the preser-  
3 vation of the public peace, health and safety; now,  
4 therefore,

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

7 P&SL 1983, c. 25, §§8, 9 and 10 are amended to  
8 read:

9 Sec. 8. Initial appointed trustees. Following  
10 acceptance of this Act, the Pleasant Point  
11 Passamaquoddy Reservation Tribal Council, with the  
12 advice and consent of the Governor of the Pleasant  
13 Point Passamaquoddy Reservation Tribal Council shall  
14 appoint a board of trustees comprised of 3 members,  
15 each a resident of the district. The sole function of  
16 these trustees shall be to set the necessary machin-  
17 ery in motion and assist in the election of the board  
18 of trustees, as set forth in section 9.

19 Sec. 9. Board of trustees; election; vacancy.  
20 All the affairs of the district shall be managed by a  
21 board of trustees comprised of 5 members of which 3  
22 members, each a resident of the district, shall be  
23 elected by Australian ballot at a special district  
24 meeting, as soon as possible, following the accept-  
25 ance of this Act. Additionally, one trustee shall be  
26 elected from the City of Eastport and one trustee  
27 shall be elected from the Town of Perry, following  
28 the procedures for municipal elections, ~~except that,~~  
29 ~~in the event no one volunteers to run for.~~ In the  
30 event no one is elected to the office of trustee in  
31 either of these municipalities, the municipal offi-  
32 cers shall appoint a trustee to serve for a normal  
33 term. In the event no one is elected to any position  
34 as trustee as a resident of the district, the Pleas-  
35 ant Point Passamaquoddy Reservation Tribal Council,  
36 with the advice and consent of the Governor of the  
37 Pleasant Point Passamaquoddy Reservation, shall ap-  
38 point a trustee or trustees to serve for a normal  
39 term.

40 The terms of the members of the board shall be as  
41 follows: One elected member and one appointed member

1 shall serve for one year from date of the first elec-  
2 tion following acceptance of this Act; 2 members, one  
3 elected and one appointed shall serve for 2 years  
4 from the date of the first election following the ac-  
5 ceptance; the 3rd elected member shall serve for 3  
6 years from the date of the first election following  
7 the acceptance. Following the expiration of each of  
8 the terms of the first elected and appointed trustees  
9 of the district, their successors shall be elected or  
10 appointed for 3-year terms. All trustees shall serve  
11 until their successors are elected, appointed and  
12 qualified. Trustees shall be eligible for reelection  
13 and reappointment.

14 The terms of the trustees shall be 3 years, ex-  
15 piring on the Sunday before the first Monday in  
16 April, except that the terms of the initial trustees  
17 shall expire one year, 2 years or 3 years from the  
18 first Monday in April following their election or ap-  
19 pointment. At the first meeting of the full board of  
20 trustees, the terms of the initial trustees shall be  
21 selected by lot: From the district, one for a one-  
22 year term; one for a 2-year term; and one for a  
23 3-year term; and, from Perry and Eastport, one for a  
24 one-year term and one for a 2-year term. All trust-  
25 ees shall serve until their successors are elected,  
26 appointed and qualified. Trustees shall be eligible  
27 for reelection and reappointment. At each annual  
28 meeting, the board shall prepare a list of the trust-  
29 ees with the expiration date of their terms and a re-  
30 quest to hold elections within the year to fill any  
31 expiring terms and send the list by certified or reg-  
32 istered mail to the Pleasant Point Reservation of the  
33 Passamaquoddy Tribe, the City of Eastport and the  
34 Town of Perry.

35 When any trustee ceases to be a resident in the  
36 district or in the municipality he represents, he va-  
37 cates the office of trustee. Vacancies in the office  
38 of elected trustees shall be filled by special  
39 district election, except that a vacancy occurring  
40 within 6 months one year of the expiration of an  
41 elected a trustee's term of office may be filled by  
42 appointment of a successor residing in the district  
43 to serve the unexpired portion of the term in which  
44 the vacancy occurred. Vacancies in elected trustees  
45 shall be filled by the same procedure as specified in

1 section 8- Appointments in to the office of  
2 appointed trustee, where a vacancy occurs, shall be  
3 made by the respective municipal officers or, for the  
4 Tribe, using the procedure of section 8.

5 Within one week after the original election and  
6 elections or appointments and thereafter within one  
7 week after each annual election at the annual meeting  
8 of the district, the trustees shall meet for the pur-  
9 pose of electing a chairman, treasurer and clerk from  
10 among them to serve for the ensuing year, and until  
11 their successors are elected and qualified. The  
12 trustees, from time to time, may choose and employ  
13 and fix the compensation of any other necessary offi-  
14 cers and agents who shall serve at their pleasure.  
15 The treasurer shall furnish bond in the sum and which  
16 surety is with such sureties as approved by the  
17 trustees. The cost of the bond shall be paid by the  
18 district. At its original meeting the trustees  
19 shall, in addition to the foregoing, adopt a corpo-  
20 rate seal, and elect a treasurer who may or may not  
21 be a trustee. The trustees may adopt and establish  
22 bylaws consistent with the laws of this State neces-  
23 sary for their own convenience and the proper manage-  
24 ment of the affairs of the district and perform any  
25 other acts within the powers delegated to them by  
26 law.

27 The trustees shall be sworn to the faithful per-  
28 formance of their duties, which shall include the du-  
29 ties of any member who serves as clerk or as clerk  
30 pro tem. The trustees shall make and publish an an-  
31 nual report, including therein a report of the trea-  
32 surer. The trustees, including the initial appointed  
33 trustees, shall have the same powers and perform the  
34 same duties as otherwise exercised and performed by  
35 the selectmen or towns for the calling and holding of  
36 district elections and district meetings, and for the  
37 correction and preparation of lists of persons quali-  
38 fied to vote in the district. All meetings of the  
39 district shall be presided over by the chairman of  
40 the board of trustees, who shall have the same au-  
41 thority as moderators of town meetings. District  
42 meetings shall be conducted in the same manner as  
43 town meetings.

1 Members of the board of trustees shall be eligi-  
2 ble for any office under the board. All of the  
3 trustees shall receive compensation as recommended by  
4 them and approved by a majority of the Pleasant Point  
5 Passamaquoddy Tribal Council. Certification of the  
6 compensation shall be recorded with the office of the  
7 Secretary of State and recorded in the bylaws of the  
8 district. The respective compensation for duties as  
9 trustees shall be on the basis of such specified  
10 amount as may be specified in the bylaws, for each  
11 meeting actually attended, and reimbursement for  
12 travel and expenses, with the total not to exceed  
13 such specific amount as may be specified in the by-  
14 laws.

15 Sec. 10. Annual meeting of the district. After  
16 the acceptance of this Act, and the organization of  
17 the board of trustees as provided in this Act, the  
18 annual meeting of the district ~~for the election of~~  
19 ~~trustees~~ shall be held on the first Monday of each  
20 April, at such hour and place as may be designated by  
21 resolution of the board of trustees as provided in  
22 the bylaws. Notice thereof shall be as provided in  
23 the Maine Revised Statutes Annotated for town meet-  
24 ings.

25 Emergency clause. In view of the emergency cited  
26 in the preamble, this Act shall take effect when ap-  
27 proved.

28 STATEMENT OF FACT

29 The bill clarifies the Charter of the  
30 Passamaquoddy Water District to provide for elected  
31 trustees from the Pleasant Point Passamaquoddy Reser-  
32 vation, the City of Eastport and the Town of Perry  
33 with staggered 3-year terms beginning on the first  
34 Monday in April. Transitional provisions are in-  
35 cluded, as are provisions for appointment to fill va-  
36 cancies.

37

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L.D. 2136

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(Filing No. H-564)

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
111TH LEGISLATURE  
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1614,  
L.D. 2136, Bill, "AN ACT to Amend the Charter of the  
Passamaquoddy Water District."

8

9

10 Amend the bill in the first line after the enact-  
11 ing clause (page 2, line 7 in L.D.) by inserting at  
12 the beginning the following: 'Sec. 1.'

13 Further amend the bill in section 9 in the 5th  
14 paragraph by striking out all of the first sentence  
15 (page 4, lines 5 to 11 in L.D.) and inserting in its  
16 place the following:

17 'Within one week after the annual meeting of the  
18 district, the trustees shall elect from among them-  
19 selves a chairman, treasurer and clerk to serve for  
20 the ensuing year and until their successors are  
21 elected and qualified.'

22 Further amend the bill in by inserting before the  
23 emergency clause the following:

24 'Sec. 2. Validation of election of district  
25 trustees. The Trustees of the Passamaquoddy Water  
26 District, elected by the voters within the  
27 Passamaquoddy Indian Reservation, the City of  
28 Eastport and the Town of Perry to serve as such, are  
29 hereby declared to be and have been duly elected and  
30 qualified for the respective terms for which each was  
31 elected. Certification shall be filed with the Sec-  
32 retary of State by the tribe, the city and the town,  
33 respectively.'

