

MAINE STATE LEGISLATURE

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New Draft of H. P. 1097, L. D. 1304
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1603

H. P. 1467

House of Representatives, May 14, 1981

Reported by Representative Weymouth from the Committee on Public Utilities. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Incorporate the Cobscook Bay Tidal Power District.

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

Sec. 1. Findings. The Legislature finds that the formation and operation of a tidal power district could provide significant amounts of electricity at reasonable cost to the general public in Eastport, Pleasant Point, Perry, Pembroke, Dennysville, Whiting and Lubec, and in the unorganized townships of Edmunds and Trescott; the development of the tidal power resources in the district could significantly contribute to the economic development of the territory within the district; the district territory comprises a number of depressed areas that could benefit from increased economic development; there has been considerable planning to develop the district's tidal power resources; and the development of the district's power resources will be helped by organizing a district as soon as possible. The district would then be able to conduct the necessary engineering, environmental and economic studies to evaluate potential projects. If any project is determined feasible and economically sound, with acceptable environmental impacts, the district would then be authorized and equipped to develop it.

Sec. 2. Territorial limits; incorporation; purpose. The inhabitants and territories in the municipalities of Eastport, Pleasant Point, Perry, Pembroke, Dennysville, Whiting and Lubec, and in the unorganized townships of Edmunds and Trescott in the County of Washington, are created a quasi-municipal body corporate and politic under the name of "Cobscook Bay Tidal Power District."

The purpose of the district is to develop the tidal energy resources of the district and to generate electricity through the development of those tidal energy resources for consumption within the district and elsewhere.

Sec. 3. Definitions. As used in this Act, unless the contents otherwise indicates, the following terms have the following meanings.

1. **Customer.** "Customer" includes any person, firm, corporation, government or governmental division in the district which has applied for and is granted service or which is responsible for payment of the service.

2. **District.** "District" means the Cobscook Bay Tidal Power District.

3. **Electric company.** "Electric company" is construed according to the Revised Statutes, Title 35, section 15, subsection 5.

4. **Tidal power.** "Tidal power" means electric power generated from the energy made available by the rising and falling of the tides in tidal waters.

5. **Wholesaler of electricity.** "Wholesaler of electricity" applies to the district when performing its function of manufacturing of electricity for sale to electric companies.

Sec. 4. General powers and duties. The district shall have such powers as may be necessary or convenient to carry out the purposes of this Act. Without limiting the generality of the foregoing, to the extent necessary or convenient to carry out the purposes of the Act the district shall have the power:

1. **Manufacture of power.** To construct or purchase and operate and maintain electrical generation, transmission and distribution systems and other facilities, necessary to accomplish the purposes of this Act, including dams and related power generation facilities. The district may construct or purchase and maintain lines, poles and wires over, across and under roads, streets and private property, but shall be liable to pay damages for any activity authorized by this section. Damages shall be determined in accordance with the Revised Statutes, Title 35, chapter 179. Notwithstanding the provisions of Title 35, section 2323, subsection 3, the district may be deemed a small power producer within the meaning of that section so long as the district operates a power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of electricity and so long as no approval by the Public Utilities Commission has been issued pursuant to subsection 3. Upon such approval the district shall be deemed an electric company;

2. **Purchase power.** To purchase power and energy;

3. **Sale of power.** To sell and transmit energy and power to any electric company and, subject to the approval of the Public Utilities Commission as provided in the Revised Statutes, Title 35, chapter 171, to the inhabitants of the district, including persons, firms, corporations, associations and governmental

organizations. While operating as an electric company, the district shall conform to the requirements of the Revised Statutes, Title 35, except that approval of the district's rates by the Public Utilities Commission shall not be required except as provided in subsection 8.

The district may not sell and transmit energy and power to the inhabitants of the district prior to January 1, 1991. In the event the Public Utilities Commission approves such service, it shall order the district to compensate any electric company or other utility already providing such service for the fair value of its investment in facilities dedicated to such service. In the alternative, or in satisfaction of any part of the foregoing obligation, the district may purchase such facilities from the electric company or other utility at prices and upon terms and conditions as approved by the Public Utilities Commission;

4. Accept gifts and grants. To accept gifts or grants of property, funds, money, materials, labor, supplies or services from the United States, the State of Maine or from any person, and to carry out the terms or provisions or make agreements with respect to any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with procuring acceptance or disposition of gifts or grants;

5. Acquisition and disposal of property. To acquire by purchase, lease, gifts or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, tangible or intangible, and to sell, lease, mortgage, exchange, transfer or otherwise dispose of any real or personal property or interest in them, or to grant options for any of these purposes;

6. Borrow funds. To borrow and issue notes and bonds as provided in this Act;

7. Contracts. To contract with electric companies and other persons, firms, corporations, associations and governmental organizations.

In contracts for the sale of electric power by the district, such contracts shall provide revenues for the district at least sufficient for the following purposes:

A. To pay the current expenses of the district;

B. To provide for the payment of the interest on the indebtedness created or assumed by the district;

C. To provide each year a sum equal to not less than 2.5% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such 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;

D. To pay the principal of serial bonds or notes payable each year; and

E. To provide each year for payments to a reserve fund sufficient to provide for renewal and replacement of equipment;

8. Rates. To establish rates for the retail sale of electricity to customers in the district. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of the district the rates established by the trustees for the electric power used by them, but the rates shall be uniform within the territory supplied by the district wherever the cost of providing service is substantially uniform, but nothing herein may preclude the district from establishing higher rates where, for any reason, its costs exceed the average, but such higher rates shall be uniform throughout the area where they apply. The rates shall be so established as to provide revenue for the district for the following purposes:

- A. To pay the current expenses of the district;
- B. To provide for the payment of the interest on the indebtedness created or assumed by the district;
- C. To provide each year a sum equal to not less than 2.5% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such 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;
- D. To pay the principal of serial bonds or notes payable each year; and
- E. To provide each year for payments to a reserve fund sufficient to provide for renewal and replacement of equipment.

No rates, tolls or charges to customers may be set or changed by the district without first holding a public hearing at which customers may testify and may question the trustees present regarding the proposed rate, toll or charge. Notice of the hearing shall be given in a newspaper of general circulation in the district at least 14 days prior to the hearing and shall include the date, time, place and purpose of the hearing. Rate changes may not take effect until 30 days after the public hearing.

If, on or before the effective date of the rate changes, 10% of the customers in the district, or 10% of the customers served at a higher rate than the uniform rate, or 10% of a single class of customers file with the trustees and the Public Utilities Commission petitions demanding a review of the rate changes by the Public Utilities Commission, the rate change may be suspended, investigated, reviewed and changed in accordance with the Revised Statutes, Title 35, section 69.

Upon review of a rate filing, the Public Utilities Commission may order any new rate, toll or charge as may be proper in a proceeding of an electric utility regulated by the Public Utilities Commission.

If this district provides electric power at both wholesale and retail simultaneously, revenues from contracts and rates must be established so as to provide revenues for the purposes cited in this subsection and in subsection 7; and

9. Surplus. If any accumulated surplus exceeds 5% of gross annual revenues, it shall be distributed to the municipalities forming the district, except in the case of unorganized townships to the County of Washington for their benefit, in proportion to the population as determined by the most recent decennial census; and

10. Other powers and duties. To do all things necessary, convenient or desirable to carry out the purposes of this Act or the powers expressly granted or necessarily implied in this Act.

Sec. 5. Appointment and election of trustees.

1. Number of trustees and term of office. All of the affairs of the district shall be managed by a board of not more than 18 trustees, resident of the district, who shall be chosen as provided in this section. There shall be at least one trustee from each municipality in the district, but there may be 2 trustees from any municipality, as specified in the bylaws. The trustees, except the initial appointed and initial elected trustees, shall serve terms of 3 years beginning July 1st and ending June 30th.

2. Initial appointed trustees. Following acceptance of this Act, one trustee shall be appointed by the municipal officers of each municipality of the district and the Washington County Commissioners shall appoint one trustee from Edmunds and Trescott. Each appointed trustee shall serve until the next regularly scheduled municipal election in that municipality which that trustee represents.

3. Initial elected trustees. Each municipality, at its first regularly scheduled municipal election following acceptance of this Act, shall elect a trustee to replace its initial appointed trustees. Of these initial elected trustees, 3 shall serve terms ending June 30, 1982, 3 shall serve terms ending June 30, 1983, and 3 shall serve terms ending June 30, 1984. The initial terms shall be chosen for each municipality by lot.

4. Election of trustees. Prior to each annual meeting of the district, the inhabitants of each municipality shall elect the same number of trustees as the number of vacancies existing at the time of the election, plus the number of vacancies that are scheduled to occur within one year. The trustees shall be eligible for reelection, but shall not serve more than 2 consecutive 3-year terms.

5. Vacancies. When any trustee ceases to be a resident of the district, the position held by that trustee shall be deemed vacant. Whenever a vacancy occurs in the board of trustees, by resignation, change of residence or other means, the vacancy shall be filled until the next regularly scheduled municipal election of district trustees in a municipality by a temporary appointment made in accordance with subsection 2. At the election, the vacancy shall be filled for the remainder of the term of the position, by election in accordance with subsection 4.

Sec. 6. Nomination of trustees and election procedures. Nominations and elections shall be conducted in accordance with the laws relating to municipal

elections, except in the unorganized townships, nominations and elections shall be conducted by the Washington County Commissioners.

Sec. 7. Organization and compensation of the board of trustees. 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 with sureties as approved by the trustees, the cost thereof to be paid by the district.

At the original meeting, the trustees shall organize by electing from their own members a chairman, a treasurer and a clerk and adopting a corporate seal. The trustees may adopt and establish bylaws, consistent with the laws of the State and 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 receive compensation as approved by district vote, but the treasurer may be allowed such compensation as the trustees determine.

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 clerk pro tem. They shall make and publish an annual report, including a report of the treasurer.

Sec. 8. District authorized to make contracts; incidental powers and privileges. The district, through its trustees, may contract with persons and corporations. All the incidental powers, rights and privileges necessary to the accomplishment of the main objective set forth in this Act are granted to the district.

Sec. 9. Conflict of interest. No trustee or employee of the Cobscook Bay Tidal Power District may acquire any interest, direct or indirect, in any contract or proposed contract of the district nor may any trustee or employee participate in any decision on any contract entered into by the district if he has any interest, direct or indirect, in any firm, partnership, corporation or association which will be party to the contract, except this prohibition shall not be applicable to the acquisition of any interest in notes or bonds of the district or to the execution of agreements by financial institutions authorized to do business in this State for the deposit or handling of district funds in connection with any contract to or act as trustee under any trust indenture, or to utility services, the rates for which are controlled by a governmental agency.

Sec. 10. Annual meeting. The district shall hold an annual meeting on a date to be established by the trustees in the bylaws. The meeting shall commence no earlier than 6:30 p.m. At the annual meeting, the trustees shall present the budget for the following year and descriptions and cost estimates of any construction projects which individually are expected to exceed \$25,000 to be undertaken in the following year.

Notice of the meeting shall be published in a newspaper of local circulation for 3 consecutive days, and conspicuously posted in at least 2 public places in each municipality within the district, at least 14 days prior to the annual meeting.

If the district manufactures electric power for wholesale only, proposed individual construction projects in excess of \$25,000 shall be submitted to the district voters at the annual meeting for voter approval. In order for the district voters to approve or disapprove the projects, there shall be present and voting at the meeting a number of voters equal to or greater than 5% of the total vote for all candidates for Governor in the municipalities at the next previous gubernatorial election. Failure of approval by the necessary majority of percentage of voters shall not prevent subsequent approval of the projects. A quorum of 50 voters is required for action on other matters. The voters may approve the budget, or part of it, but in the absence of a quorum the budget shall stand.

Sec. 11. Special meetings of the district. Special meetings of the district may be called by the board of trustees at any time, and notice of special meetings, stating the place and time and the business to be transacted, shall be signed by the chairman or clerk of the board of trustees and shall be conspicuously posted in at least 2 public places in each municipality within the district, not less than 7 calendar days before the meeting. Fifty persons qualified to vote in the meetings shall constitute a quorum. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 12. Qualification of voters. The registrars of voters of each municipality in the district shall submit to the trustees correct lists of persons in their respective political subdivisions qualified to vote in the district. Residents of the unorganized townships of Edmunds and Trescott shall register in municipalities that are part of the district to vote in district meetings. The board of trustees shall use these lists to qualify voters in district meetings. The registrars of voters shall be in session to register voters between the hours of 12 noon and 8 p.m. on the day prior to and on the day of any annual or special meeting of the district. Notice of the availability of the registrars of voters and the county commissioners shall be given in the call for the meeting.

Sec. 13. Authorization to borrow money and to issue bonds and notes. In order to accomplish the purposes of this Act, the Cobscook Bay Tidal Power District by vote of its board of trustees, without district vote except as hereinafter provided, may borrow money temporarily for periods up to 12 months and issue negotiable notes for that purpose. The district may issue bonds, notes or other evidences of indebtedness by vote by the board of trustees for the purposes established in this section.

1. Purposes for which district bonds and notes may be issued. The district may issue bonds and notes to:

A. Renew and refund existing indebtedness;

- B. Acquire properties and pay damages;
- C. Construct or purchase and maintain power generating, distribution and transmission systems; and
- D. Make improvements, additions or extensions to power generating, distribution and transmission systems.

2. Bond interest; terms of sale and issue. The bonds shall bear interest at rates and have terms and provisions as determined by the trustees. No issue may run for a longer period than 40 years from the date of original issue. Bonds, notes or evidences of indebtedness may be issued with or without provisions for calling them prior to maturity, and, if callable, may be made callable at par or at such premium as the trustees may determine.

All bonds, notes or other evidences of indebtedness shall have inscribed upon their face the words "Cobscook Bay Tidal Power District," and shall be signed by the treasurer and countersigned by the chairman of the board of trustees of the district. If coupon bonds are issued, the interest coupons attached thereto shall bear the facsimile of the signature of the treasurer. All bonds, notes and evidences of indebtedness issued by the district shall be legal obligations of the district, which is declared to be a quasi-municipal corporation within the meaning of the Revised Statutes, Title 30, section 5053, and subject to its provisions.

The district may, from time to time, issue its bonds, notes and other evidence of indebtedness for the purpose of paying, redeeming or refunding outstanding bonds, notes or evidences of indebtedness, and each authorized issue constitutes a separate loan. All bonds, notes and evidences of indebtedness issued by the district shall be legal investments for savings banks in the State and shall be tax exempt.

3. Notice of bond and note issues; public approval of debt financing. In the event that the trustees vote to authorize bonds or notes to acquire property, to fund the cost of energy generation, transmission or distribution systems, or funds renewals, additions or capital cost improvements, the estimated cost of which, singly or in the aggregate included in any one financing, is \$150,000 or more, subject to adjustment relative to 1981 as the base year according to the annual Consumer Price Index, as published by the appropriate federal agency, the trustees shall provide notice to the general public 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.

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. 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. For debts in excess of the amount specified in the first paragraph, if requested by petition of not less than 50 qualified voters of the district, filed with the clerk of the district on or before the date of the meeting, the

voters at 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.

4. Contracts with financing organizations. The district may enter into agreements with the State Government or Federal Government, or any agency of either, or any corporation, commission or board authorized by the State Government or Federal Government to grant or loan money to or otherwise assist in the financing of projects such as the district is authorized to carry out, and to accept grants and borrow money from any government agency, corporation, commission or board as may be necessary or desirable to implement this Act.

Sec. 14. Sinking fund. If term bonds or notes are issued, a sinking fund shall be established by the trustees of the district to redeem the bonds or notes when they become due. A sum sufficient to redeem the bonds or notes at maturity, and in no case less than 2.5% of the aggregate principal of the outstanding bonds or notes issued on account of or in behalf of the district, shall be turned into the sinking fund each year to provide for the final extinguishment of the district-funded debt.

The money set aside for the sinking fund shall be devoted to the retirement of the bonds and notes, and shall be used for no other purposes, and shall be invested in such securities as savings banks are allowed to hold.

Whenever any bonds of the district become due or can be purchased by the trustees on favorable terms, the trustees may, if sufficient funds have accumulated in the sinking fund, redeem or purchase the bonds and cancel them. In no case shall bonds so canceled or redeemed bonds be reissued.

In case the amount in the sinking fund is not sufficient to pay the total amount of the bonds falling due at any one time, authority to issue new bonds sufficient to redeem as many of the bonds as cannot be redeemed from the sinking fund is granted to the trustees.

If serial bonds are issued, revenues sufficient to meet principal and interest payments must be set aside for such payments when due.

Sec. 15. Acquisition of property.

1. Eminent domain. The district may acquire by the exercise of the power of eminent domain any real property within the boundaries of the district, except lands owned or held in trust by the State, or any interest therein, which it deems necessary for its purposes under this Act, after the adoption by it of a resolution declaring the acquisition of the real property or interest therein described in the resolution, is necessary for those purposes.

2. Restrictions. The district shall exercise the power of eminent domain in the manner provided in the Revised Statutes, Title 30, section 4807, as amended from time to time. References in the Revised Statutes, Title 30, section 4807, to an

urban renewal project and a renewal project area and the like are inapplicable. Notwithstanding the Revised Statutes, Title 30, section 4807, subsection 2:

A. No facility for the generation, transmission or distribution of electric power and energy owned by any person may be so taken, except for the purpose of acquiring property or rights sufficient to permit the crossing of existing transmission or distribution facilities. Any property so acquired from a public utility must be approved by the Public Utilities Commission; and

B. No site for a project for which any utility or person had filed an application for preliminary permit or a license from the Federal Energy Regulatory Commission on or before the effective date of this Act may be so taken until such time, if ever, that the application is denied, and no further renewals or appeals are available to the utility or the person, or the utility or person abandons its application, permit or license.

3. Entry upon lands. No entry may be made on any private lands acquired under this section, except to make surveys, until the expiration of 20 days from the filing, at which time possession may be held of all the lands or the interest taken in them.

Sec. 16. Excavation or repair work; closing of ways. Whenever the district enters, digs or excavates any public way or other land for the purpose of installing lines, wires or poles, or maintaining these facilities or for any other purpose, the work shall be expeditiously done with the least possible interruption. On completion of the work, the district shall restore the way or land to its condition prior to the work, or to equally good condition. The procedures of the Revised Statutes, Title 35, chapter 173, apply to this section.

Whenever the character of the work is such as to endanger travel on any public way, the municipal officers or, for the unorganized townships, the county commissioners may order a temporary closing of the way and of any intersecting way, upon request of the district, and the way shall remain closed to public travel until the municipal officers deem it is restored to a condition safe for traffic.

Sec. 17. Free access to premises. The officers or agents of the district shall have free access to all premises served by its transmission lines, poles and wires at all reasonable hours to ascertain the amount of electrical power purchased and to enforce the provisions of this Act and the rules and regulations prescribed under this Act.

Sec. 18. Property tax exempt. The real and personal property, rights and franchises of the district shall be forever exempt from taxation.

Sec. 19. Referendum. This Act shall take effect when approved only for the purpose of permitting its submission to the voters of the district at a special election or elections to be called and held for that purpose. The elections shall be called by the municipal officers for the municipalities in the district and shall be held at the regular voting places. The dates of the elections shall be determined by the municipal officers, or for Edmunds and Trescott, the Washington County

Commissioners, but shall not be later than the 2nd Wednesday of April, 1982. Such special elections shall be called, advertised and conducted according to the law relating to municipal elections; except that the board of registration shall not be required to prepare nor the municipal clerk to post a new list of voters, and the registrars of voters shall be in session to register voters between the hours of 12 noon and 8 p.m. on the day prior to and the day of the election. The municipal clerk shall reduce the subject matter of this Act to the following question:

“Shall an Act to incorporate the Cobscook Bay Tidal Power District be accepted?”

The voters shall indicate by a cross (X) or check mark (✓) placed against the word “Yes” or “No” their opinion of the same. This Act shall take effect for all of its purposes immediately upon its acceptance by a majority of the legal voters of the district voting at the elections, but only if the total number of votes cast for and against the acceptance of this Act in the special elections equals or exceeds 15% of the total vote for all candidates for Governor in the municipalities at the next previous gubernatorial election; but failure of approval by the necessary majority or percentage of voters shall not prevent subsequent elections.

The results of the election shall be declared by the municipal officers or, for Edmunds and Trescott, the County Commissioners, and due certificates of the results shall be filed by the municipal and county clerks with the Secretary of State.

STATEMENT OF FACT

This new draft clarifies the intent that full studies be conducted before any construction, and clarifies the purposes of the district. It also makes it clear that Public Utilities Commission approval is required for the district to operate as an electric company, and that fair value must be paid to any other utility from which facilities may be acquired. The debt limit is deleted, but major debt authorizations are subject to district approval.