

MAINE STATE LEGISLATURE

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State of Maine
AUGUSTA, MAINE

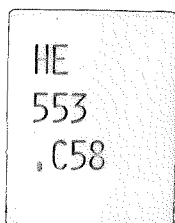
Institutional Changes in Maine State Government Agencies
for Improved Port Planning & Development Functions

December 1977

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Institutional Changes for Port Planning and Development in Maine

I. Introduction

The Maine Port Planning and Development Program, begun in December, 1976, as a cooperative effort of the Maine Department of Transportation and the State Planning Office, has identified a variety of issues concerning the roles that ports play in the coastal and statewide economies of Maine. Significant needs related to port planning have also been identified. These include:

Better technical engineering and economic assistance to communities undertaking port and harbor improvement projects,

New and expanded port facilities for the commercial fishing industry,

New approaches to the question of general cargo handling in Maine,

A mechanism to deal with a variety of port problems which are common to all port development projects, such as the location of sites for dredge spoil disposal.

The capability to look at potential future demands on ports within the context of an overall understanding of the roles and functions of Maine ports.

The Planning Volume, Volume 3 of the Port Planning Program's Phase I effort, identified several of these issues, and suggested studies to look further into several of the major issues concerning port development. Some of these studies, notably ones on cargo port development, the fishing industry, and the siting of heavy industrial facilities, have been undertaken by various state agencies at the request of the Governor's Advisory Committee on Coastal Development and Conservation. The results of these studies, in addition to the results indicated from Phase I of the Port Planning Program point clearly to a need to consider ports as a special case in any efforts at considering the future of the Maine coast and the state's economy.

But while a variety of needs have been identified for future work in port planning and development, there remains the vital question of how future needs are to be met. Even a cursory glance at existing institutions concerned directly with ports indicates that there is little current commitment on the part of State government in Maine to address the majority of needs identified for the future. The question of what changes are necessary within state government to address port and harbor development issues is the subject of this paper.

II. Existing Laws and Institutions related to Port Planning and Development in Maine.

1. The Department of Transportation

When the Department of Transportation (DOT) was created in 1972, it was assigned a variety of functions related to port planning and development. The Bureau of Waterways was created as one of the bureaus within the Department, and was assigned by the Commissioner the powers and responsibilities enumerated in Title 23, Section 4206 1 H, that is, "To acquire construct, operate, and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports, and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation".

Under this authorization, the Bureau of Waterways operates two services which were assigned to it from the Maine Port Authority. These are the Maine State Pier in Portland and the Maine State Ferry Service. Operation of the Maine State Pier includes operation and maintenance of the general cargo handling facilities at the Pier and promotion of the pier to potential users in Maine. Employees of the Bureau of Waterways also promote the use of the cargo facilities at Searsport to potential users. The Maine State Ferry Service operates ferries from the mainland to a number of offshore islands, and maintains the terminals for this service. The Bureau also maintains the Ferry Terminals on several Casco Bay Islands. An organization table for the Bureau is shown in Table 1.

The Maine Port Authority was created by the Private and Special Laws of 1929 (Chapter 114, as amended) as the successor to the Port of Portland Authority. The Maine Port Authority operated the State Pier and Ferry Service until these functions were assigned to the DOT. In addition, the Port Authority built the ferry terminal at Bar Harbor for the Canadian National Railway ferry service between Bar Harbor and Yarmouth, Nova Scotia. This terminal is permanently leased to CN for this service.

The Port Authority is empowered to build and operate port facilities, but its powers are limited. It may only finance facilities through the issuance of revenue bonds, that is bonds which must be paid back through the revenues generated by the facility. While it has the power of eminent domain, it may only exercise the power within the towns of Bar Harbor and Portland.

While the Port Authority continues to exist as an institution, its only current function is to provide the State with a vehicle by which to issue revenue bonds for port development. The only example of this authority being used was the Port Authority's attempt to develop a terminal in Portland harbor for the New England Energy Company's proposed refinery at Sanford. This attempt was not successful however, since one of the partners in the NEECO proposal went bankrupt and the company was forced to indefinitely postpone its plans for a refinery.

The present structure of the Maine Port Authority is a Board with five members. The Commissioner of Transportation serves, ex officio, as Chairman; two members are appointed by the Governor and one member is appointed each by the Cities of Portland and South Portland. The current Board members are Roger Mallar (Commissioner of the Department of Transportation), Widgery Thomas (Governor's appointee), John Menario (Portland) and Ralph Kilgore (South Portland). There is one vacancy.

The Bureau of Transportation Planning and Services in DOT has overall responsibilities for planning related to transportation in the state, and is the agency within DOT which has had responsibility for conducting the Port Planning Program.

2. The Department of Conservation

Within the Department of Conservation (DOC), the Bureau of Parks and Recreation has responsibilities for the creation and maintenance of state parks and for providing boat launching ramps and public marina services. The Bureau provides these, with state and federal funds, at the request of communities.

3. Other State Agencies

No other state agency has direct involvement with the construction and operation of port and harbor facilities, except in a regulatory role. The Department of Environmental Protection has a variety of regulatory authority over port development projects, as does the Bureau of Public Lands, should a project be on public lands or should a project involve the leasing of submerged lands.

Several state agencies have interests in ports, including the Department of Marine Resources, the State Planning Office, and the State Development Office. With these agencies, ports play a part in the mission of the agency, but there is currently no active involvement in port related work, with the exception of the studies mentioned above.

The overall picture of current state agency involvement with ports (Table 2) must be seen as one in which some needs are being met, but not all, and in which the future needs that have been identified by the CCDC's various studies are not likely to be met without some changes.

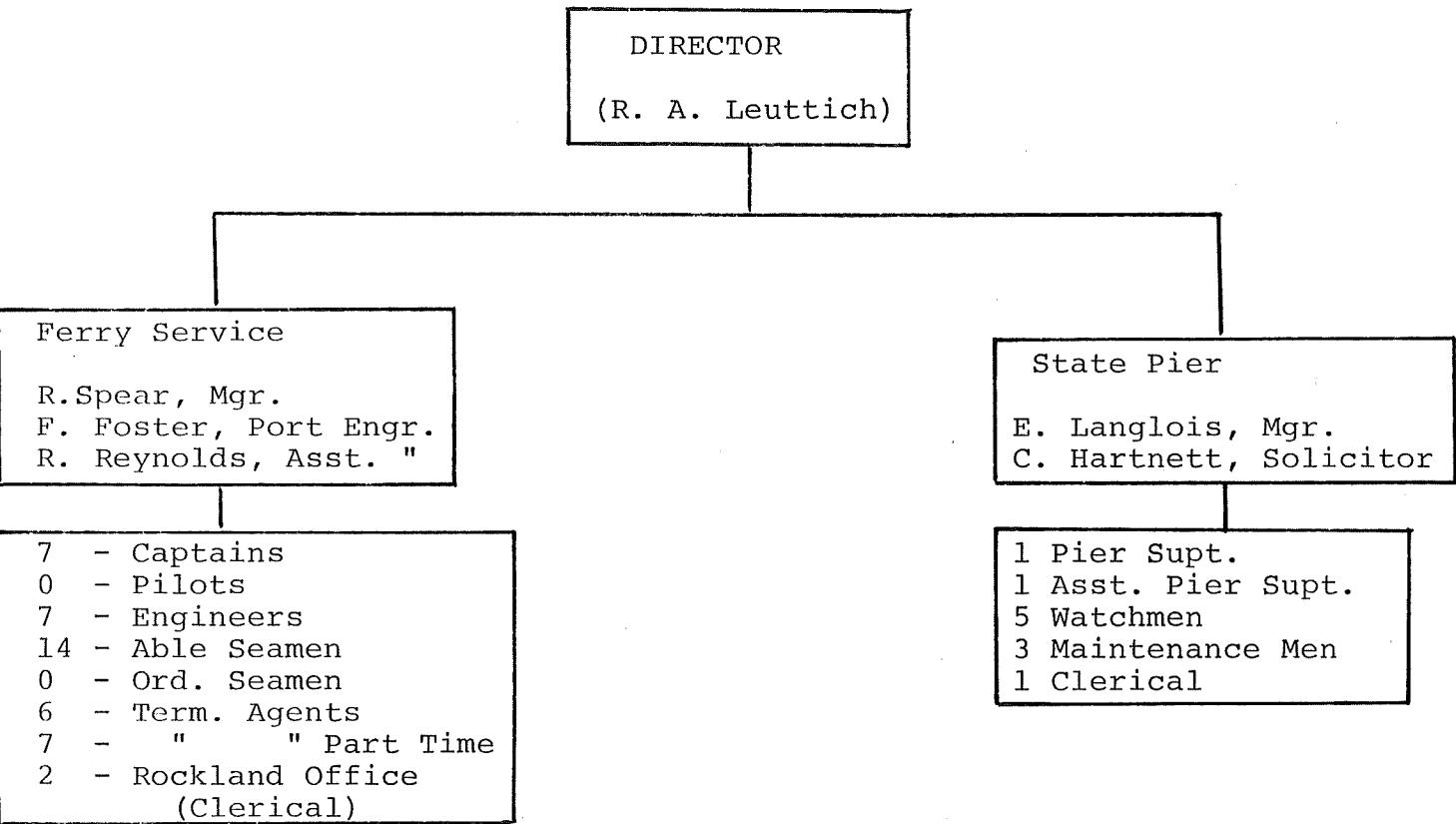
III . Future needs and ways to address them.

The principal change must be in the attitude of state government towards ports. There must be a recognition of the importance of ports to the coast and the state, and a commitment on the part of the state to adequately meet anticipated future needs of the ports.

There are two major needs which must be addressed in the future. First, is the potential need for a state agency to build and operate needed facilities for general cargo handling and the

commercial fishing industry. And second is the need for better port planning at both the state and local levels. Looking at these issues separately, and potential ways in which institutional arrangements can be established to address the issues, will indicate the general shape port planning and development institutions should take.

MAINE DEPARTMENT OF TRANSPORTATION
BUREAU OF WATERWAYS



T A B L E 1

1. Agencies with specific Port Planning and Development Responsibilities

Department of Transportation
Bureau of Waterways

Operate Maine State Pier
Promote Use of Maine Ports
Operate Maine State Ferry Service
Maintain Casco Bay Island Ferry Terminals

Maine Port Authority

Provide Revenue Bonding Capability

Department of Conservation
Bureau of Parks & Recreation

Provide Boat Launching and Marina Facilities

2. Agencies with regulatory Authority

Department of Environmental
Protection

Site Local of Development Regulation
Water Quality Regulation
Alteration of Wetlands Regulation

Department of Conservation
Bureau of Public Lands

Submerged Lands Leasing and other
Public Lands if applicable.

3. Agencies with interests in Ports as related to their mission

Department of Marine Resources
State Development Office
State Planning Office

TABLE 2

Current State Agency Functions with regard to
Port Planning and Development

I. Needs for funding of Port Facilities

1. General Cargo.

As the report from Fay, Spofford, and Thorndike makes clear, it may be possible to develop a new major cargo handling terminal in Maine. The report also indicates that existing cargo handling facilities in Maine, because they are inadequate to meet demands for the larger capacity ships and materials handling equipment. Also, here is likely to come a time in the not too distant future when Maine must make some investment in its cargo handling capabilities if it wishes to continue to provide port service for its industries.

It is clear that there must be an expanded commitment to port development if a new facility is to be built and it is not likely that existing authorities in the Bureau of Waterways or Maine Port Authority are adequate.

The principal limitation is the restriction limiting the Port Authority to revenue bonds. As Table 3 indicates, the average return after debt service for cargo handling facilities in the United States would in general be far too low to attract buyers to a bond issue secured solely by the pledge of operating revenues. While some port authorities, such as those in Massachusetts, New York-New Jersey, and Seattle-Tacoma, do make money, it is only because these authorities have access to bridge and tunnel tolls (Massport and New York-New Jersey) or airport revenues (all three) to subsidize the port operations, which are invariably money losers.

The funding in whole or part of port facilities through general obligation bonds may, therefore, be a necessity. As Table 4 indicates, the majority of funds for port development in a number of American ports has been through the issuance of general obligation bonds.

In Maine, general obligation bonds must be approved by the Legislature and Governor and submitted to the public for approval in referendum. A port agency could not, and should not, have the power to authorize the issuance of General Obligation bonds on its own. But it must have the specific authority to recommend to the Legislature that such bonds be issued, and with this must come the capability to develop the economic and engineering details to a point where an assessment of a projects viability could be made, so that the Legislature and Governor, as well as the public, can have an accurate idea of the facility, the investment, and the return which could be expected. It will be particularly critical that a comprehensive cost/benefit analysis be performed on facilities, since often it is going to be the secondary effects of port development which justify the State's investment in port facilities.

Such power would not mean that a facility would be built with general obligation bonds; only that it could. The revenue bonding capability of the existing Maine Port Authority may still be used for small projects, for portions of a large project, or for improvements. As Table 3 shows, many ports are financed through a variety of means.

Port	Reinvestment of Port Earnings	General Obligation Bonds	Revenue Bonds	State Subsidy	Federal Subsidy	Other
New London, Ct.	-	100%	-	-	-	-
Wilmington, Del.	10%	90%	-	-	-	-
Newport News, Va.	-	-	33%	67%	-	-
Norfolk, Va.	-	-	-	100%	-	-
Portsmouth, Va.	-	-	-	100%	-	-
Charleston, S.C.	30%	70%	-	-	-	-
Jacksonville, Fla.	5%	80%	15%	-	-	-
Miami, Fla.	-	-	100%	-	-	-
Panama City, Fla.	-	-	67%	-	33%	-
New Orleans, La.	24%	49%	-	27%	-	-
Lake Charles, La.	64%	-	-	-	36%	-
Houston, Tx.	9%	85%	6%	-	-	-
San Diego, Ca.	-	-	-	-	36%	64%*
Long Beach, Ca.	76%	-	24%	-	-	-
Los Angeles, Ca.	41%	-	59%	-	-	-
San Francisco, Ca.	-	62%	38%	-	-	-
Oakland, Ca.	2%	-	43%	-	24%	31%**
Portland, Or.	1%	99%	-	-	-	-
Tacoma, Wa.	3%	-	97%	-	-	-
Seattle, Wa.	79%	-	4%	-	6%	11%***
Average	17%	32%	24%	15%	7%	5%

TABLE 4

Representative Methods of Financing U.S. Public Ports
(Development Expenditures, January 1, 1966 to December 31, 1972)

* Government Development Bonds

** Certificate of Indebtedness

*** Revenue Warrants

Source: United States Department of Commerce, Public Port Financing in the United States (1974)

	<u>North Atlantic</u>	<u>South Atlantic</u>	<u>Gulf</u>	<u>Northwest Pacific</u>	<u>Great Lakes</u>	<u>California</u>
Gross Investments in Facilities	25,723	26,434	45,327	50,786	27,587	97,496
Capital Funds Ex- pended during Year	5,010	2,766	2,093	5,978	244	5,922
Capital Funds pro- vided from Sources Outside of Net Revenues	3,916	1,873	919	5,052	38	3,650
Return on Investment						
Before Debt Service	1%	4%	3%	3%	3%	5%
After Debt Service	-2%	2%	1%	-1%	-1%	2%

TABLE 3

(Figures in \$ thousands)

Source: United States Department of Commerce, Public Port Financing in the United States (1974)

The Federal government, while it has no specific program to assist port development, has provided funds to ports through the Economic Development Administration (EDA) of the Department of Commerce. The assistance from this agency requires that states (or local governments) provide a matching amount in order to receive funds. This amount may range from 50% to 80% of a projects cost. Either general obligation or revenue bonds could be used to provide the state's share for funds from EDA, and the port agency should have the authorization to provide this.

The funding capability of any state agency concerned with developing cargo ports should thus be flexible. And, since none of the current studies on port related issues clearly demonstrates the need for a facility and the precise economic climate for a facility, it is only through the creation of an agency with decision making authority, adequate staff, and flexible capabilities that future needs will be met.

2. The Fishing Industry.

As the Department of Marine Resources' report on the Fisheries development Project indicates, port infrastructure is a key element in any attempt to foster development of the fishing industry. There are already a variety of plans underway in Maine to improve port facilities related to the fishing industry. Portland will soon begin a study of the feasibility of establishing a major fish pier in the city, and Kennebunkport, Eastport, Lubec, and Stonington are all looking into the possibility of new port facilities for the fishing industry.

The provision of port infrastructure is likely to be as important to the fishing industry as the provision of roads and other infrastructure is to other industries. As such, it may be considered a proper function of the State or local governments to financially aid the development of port facilities if a port project can be shown to be essential to the fishing industry, and can be shown to be economically feasible in the same sense as general cargo facilities.

Again, while the Maine Port Authority currently has the capability of issuing revenue bonds for port development, and these bonds could be sufficient to provide either a matching share, for Federal funds (the Economic Development Administration has funded fish piers in such communities as Millbridge and Gloucester, Massachusetts) or in the case of perhaps one or two extremely profitable and active fishing facilities, the entire amount. There is, however, the distinct possibility that a fishing facility could not generate enough direct revenue to pay for itself, and that a general obligation bond of the state would be required. Moreover, there is no specific authorization for the Port Authority to develop fish port facilities, and the limitation on its powers, especially in the use of eminent domain, make the Port Authority as presently constituted, of only limited usefulness.

As with the problems associated with general cargo facility development, there is thus a need to have broader capabilities to assure that real needs in the fishing industry are met.

II. Improved Port Planning at State and Local Levels

1. Assistance to Communities which are attempting Port Planning and Development.

There are a wide variety of port and harbor projects which communities deal with. Principal among these would be questions about the needs for dredging of channels, construction and maintenance of breakwaters, navigation aids, mooring and docking facilities, and maintenance of riprap. In addition, several communities are actively involved in developing commercial port facilities, mostly for the fishing industry.

Many of the port projects communities deal with are those which come under the jurisdiction of the Army Corps of Engineers. The Corps has responsibility for all matters relating to construction and maintenance of all facilities pertaining to navigable waters in the United States. The Corps is authorized to dredge navigable channels and to build breakwaters and similar aids to navigation. It must also approve any work involving navigable waters. However, where The Corps is capable of meeting the needs for improvements in these areas, there is an extremely long process which must be undergone for the Corps to directly undertake any port improvement projects. As Figure 1 shows, the average time from the inception of a port improvement project to completion is 18 years.

Communities which face this process often do so without adequate planning and pre-engineering work. This only further delays the process. A central agency which could assist communities plan their approach to the Corps, assist in collecting needed data, and particularly which could identify a statewide schedule of port improvement requirements would be of great aid in lessening the time on the community's end that must be put into getting a Corps project approved and implemented. It must be admitted, however, that little can be done with the overall process without Congressional action.

The Coast Guard provides all buoys, markers, lights, and similar aids in the coastal waters of the United States, and a variety of other services to ports, primarily in the areas of vessel inspection and regulation. While communities have not expressed serious difficulties in dealing with the Coast Guard, a central liaison role would serve to minimize the time spent searching for appropriate authorities and securing assistance.

For those communities involved in developing facilities on their own, especially for the fishing industry, the Economic Development Administration has become a major potential funding source. While Regional Planning and Development Agencies and the State Planning Office have important roles in acting as intermediaries between the community and EDA, there are a variety of technical questions, related to the engineering of a facility or to the economies of

**CORPS OF ENGINEERS ANALYSIS OF AVERAGE TIME FOR
PLANNING AND CONSTRUCTION OF CIVIL WORKS PROJECTS
(MAY, 1971 STATUS)**

**SOURCE: AUTHORIZATION AND APPROPRIATION PROCESSES
FOR WATER RESOURCE DEVELOPMENT, CORNELL
UNIVERSITY, 1972**

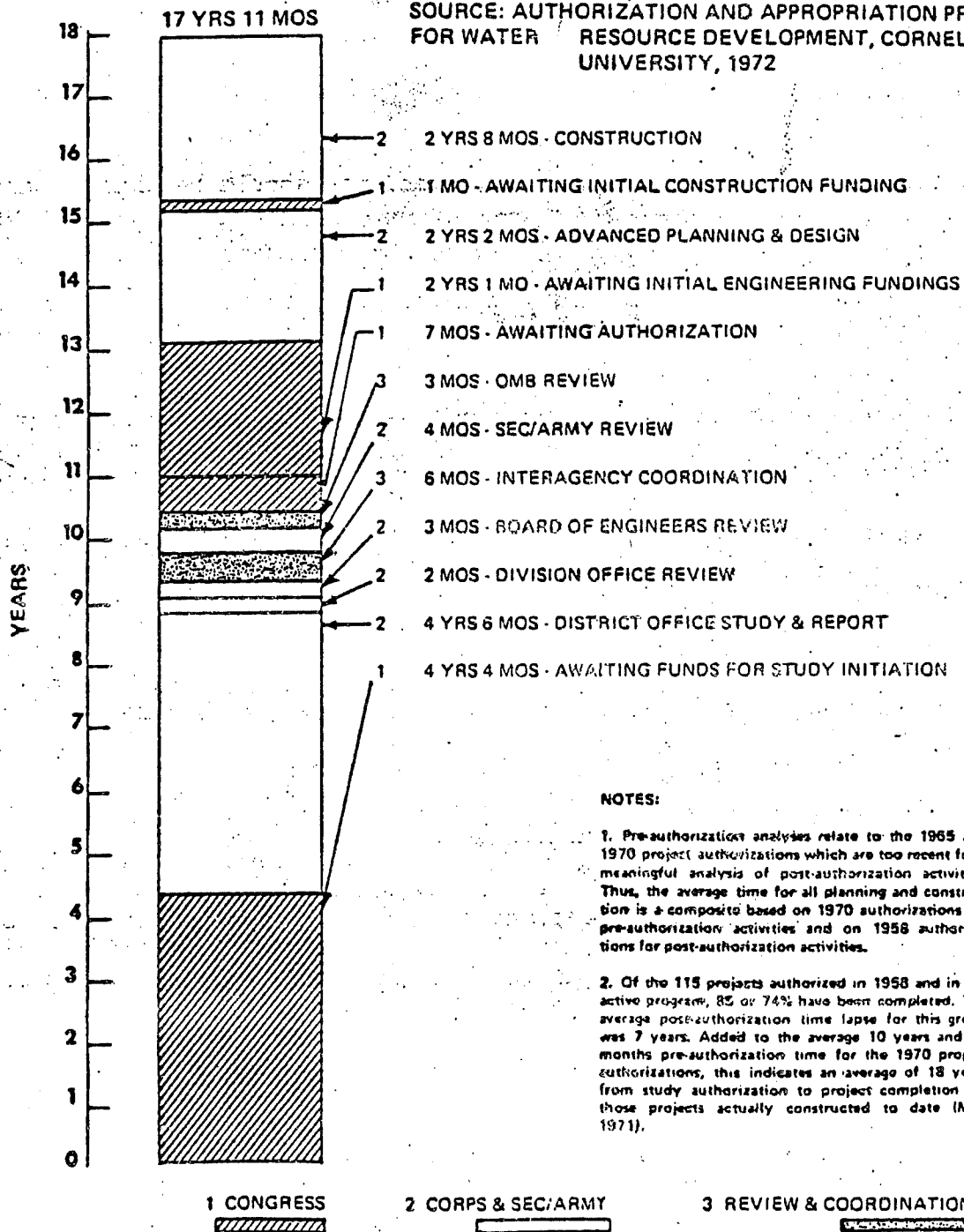


FIGURE 1

construction and operation, which communities must be prepared to present in any application for EDA assistance. While a port agency could not substitute for the traditional roles of engineering consulting firms in the development of detailed plans, a port agency can be available to assist communities in the initial development of projects to assure that they are at least minimally feasible and efficient.

An example of this kind of assistance can be found in Kennebunkport. The town identified a new pier to serve the fishing industry in Cape Porpoise as a major port development need. The original scheme developed was to build a pier across the harbor from existing facility, but assistance from the Phase I Port Planning Project indicated that a better pier could be built, and at lower cost, by building a pier from a causeway on the north side of the harbor (for a description see the Planning Volume, Exhibit III-2). While it was the consultant which suggested this change, it would be feasible for the same kinds of suggestion to be made from an engineer available for communities in a port agency.

It should be relatively clear that there is a need for an agency which can assist communities by providing technical expertise in engineering, economics, and liaison with the federal government agencies. The kinds of problems that communities face in dealing with ports cut across a wide variety of issues, and thus a variety of state agencies will have responsibilities for assisting in some way on the aspects of a particular project. Other roles would probably develop as well. But it would be inefficient, because of duplication of effort and lack of communication, for each agency which could have responsibility for assisting communities to develop its own assistance program. A central agency, with close ties to other concerned agencies would obviously be more efficient, and provide what the towns have said they must want, that is a "one-stop" place for port concerns.

2. Environmental Problems associated with port development.

The most critical environmental problem port development faces is the disposal of dredge spoils. Even in a state such as Maine, which has comparatively deep water in many of its ports, the dredging of channels, and alongside pier and docking facilities is a major component of any port. And the disposal of dredge spoils has become the major constraint on further port development in many communities. Until environmentally suitable sites or techniques are found, the question of dredge spoils disposal will continue to be a major hinderance.

This question, because it does affect almost all ports in Maine, is one which can really only be addressed on a statewide bases. In fact, the problem is so common to all ports in New England, that there

has been consideration given to a region-wide study of dredge spoils disposal sites.

While the question of spoils disposal sites is one which can only properly be handled by an environmental agency, the question is likely to be greatly affected by the pace of port development and the consequent need for spoils disposal sites. If the pace of port development is rapid, and much dredging is required, it may be more difficult to find environmentally suitable sites than if the pace is slow, and sites can be selected on the basis of recovery times for the environment. This fact, in addition to the key role which the spoils disposal issue plays in port development, makes it mandatory that an overall port agency be available to contribute to the study of disposal sites and to assist communities with their spoils disposal problems.

There are, of course, other environmental problems associated with ports, including potential wetlands alteration and water pollution and potential air pollution from certain cargoes (especially dry bulk cargoes). Most of these are specific to projects; that is, the concern will be for the environmental effects of a specific project. A port agency's involvement in the environmental planning for its own developments or community-initiated development will help minimize time in permitting procedures and assure that environmental standards are met.

3. Future demands on the Ports of Maine.

While cargo handling and fisheries can be expected to be the major commercial uses of Maine's ports in the future, there are several other demands which must be considered. Chief among these is the demand for Maine ports for recreational boating. A second potential area of demand may be the use of Maine ports in connection with a variety of heavy industrial activities which may choose to locate at or near a port. Included in this category could be service bases and platform fabrication yards for Outer Continental Shelf oil and gas exploration, Liquified Natural Gas terminals and regasification plants, and new oil handling terminals established in connection with a refinery or a strategic petroleum storage site. With both recreational and potential heavy industrial uses there will exist a need to consider potential development within the overall context of port usage, and existing port development plans. There will be, in other words, a need for comprehensive and ongoing planning with regard to all the uses of Maine ports.

Since the demands on Maine ports may sometimes conflict with one another, it will be necessary, at a minimum, to point out where there may be potential conflicts and to devise strategies for resolving such conflicts. Thus a central port agency with responsibilities for overall port planning is essential. Again, the nature of the problem is such that only a broad series of perspectives can be brought to bear if efficient planning and development is to take place.

From the foregoing discussion it may be concluded that there are several minimum requirements for changes in Port Planning and Development institutions in Maine. These include:

1. A central agency with comprehensive authority for all aspects of port planning
2. An agency with close ties to other concerned agencies, to assure effective communication
3. An Agency with flexibility in its ability to fund various port developments
4. An Agency available to communities for a variety of technical assistance.
5. An Agency with adequate staff to carry out the above missions.

It may also be concluded that existing institutional structure and practice is not capable of adequately handling these functions. The existing structure's principle faults are:

1. No staff assigned specifically for anything but operation of the State Pier and Ferry Service
2. No existing mechanism for coordination with other agencies
3. No way to build facilities except by revenue bonds
4. Eminent Domain limited to Portland and Bar Harbor
5. No overall coordination of port planning
6. No dealing with environmental problems on a systematic basis.

Alternatives for New Port Institutions

There are five minimum requirements for legislation to create new institutional capabilities for port planning and development, but there are a variety of options available as to the precise form institutional arrangements might take.

The five minimum requirements for legislation are:

1. Give the agency full statewide authority, by removing regional limitations from the existing legislation.

2. Give the Port Authority the specific authority to recommend General Obligation Bonding to the Legislature and Governor, based on full analysis of the costs and benefits expected from a proposed project. The existing revenue bonding authority should be maintained.
3. A restructuring of the Board of the Port Authority to delete the limitation of members to Portland and South Portland and to expand the board to include the commissioners of relevant agencies (DMR, DOC, DEP, SDO) and a larger public contingent (at least 4). The Commissioner of DOT should remain ex officio chairman. This would be done to assure a Statewide perspective for ports, and the close involvement of interested state agencies.
4. The explicit delineation of certain powers and authority which are only implicit in existing law, including comprehensive planning for ports, the power to provide matching funds for EDA (or other federally) funded projects, and the authority to develop a technical assistance program for communities.
5. Staff to provide services in the above areas, with a full-time port executive.

A look at Appendix A will show that the existing legislation authorizing the DOT Bureau of Waterways and Maine Port Authority, is, in general, an adequate starting point. Most of the required authority and legal definitions are already contained in these laws. There is no real need therefore, to start from scratch. New Legislation to implement the above changes should amend the existing laws.

There are two basic choices available as to how these functions should be assigned. Option 1 is to keep the existing basic structure, with the Bureau of Waterways as a branch of DOT and the Port Authority as an adjunct to the Department with the requisite authority. The Bureau of Planning could be given responsibilities for planning or these areas be shifted to the Bureau of Waterways. The current structure of DOT would suggest that the two functions would be kept separate. Option 2 would create a single port agency, with ties to the DOT through the Commissioner's presence on the Boards, and perhaps through the physical housing of the agency within the DOT building. There are several variations on Option 2, including the inclusion in a Single agency of the Ferry Service*, or the Parks and Recreation function of constructing marinas and boat launching ramps. Table 5 presents a summary of these options.

*Ferry Service Advisory Board would be kept separate.

Option 1

Department of Transportation

Bureau of Planning*

Planning for Port Authority
Projects
Technical Assistance to
Communities

Bureau of Waterways

Operations of:
State Pier
State Ferry Service
Other facilities as
they are built

Maine Port Authority----

Decisions on Funding
of Facilities
(in whole or part)

Departments of:
Marine Resources
Conservation
Environmental
Protection
State Development
Office

* These functions could be assigned either to Bureau of Planning
or to the Bureau of Waterways. The decision would be an internal one at DOT.

Option 2

The Maine Port Authority -----Department of Transportation
Department of Marine Resources
Department of Conservation
Department of Environmental
Protection
State Development Office

Board

Director

Planning and Development

Planning for own projects
Technical Assistance to Communities
Providing recreational facilities*

Operations

State Pier
State Ferry Service*-----Ferry Service Advisory Board
Other facilities are they are built

*Optional

TABLE 5

Appendix B contains a copy of the Maine Port Authority Law with suggested amendments to implement Option 1, while Appendix C contains the Law with suggested amendments for implementing Option 2. The language is only to demonstrate what the final law might look like, and the language is certainly open to changes.

Option 2A, including the Ferry Service in a new Port Authority is also included in Appendix C. However, Option 2B, including the recreational facilities function is not.

While including this function may be desirable, it is really only for the sake of completeness that it would be so; that is, creating a central agency with all port related functions. But since the Parks and Recreation Bureau currently has adequate funding sources, and an ongoing program which is apparently meeting perceived needs in their area, there does not seem to be compelling justification for shifting this function. If, in the future, there were a need to eliminate this relatively minor duplication, there should be no impediment to adding this function to the Port Authority. In the meantime, through the DOC Commissioner being on the Board and through other communications arrangements made as required, the recreational facilities questions should be linked with other port concerns adequately.

There are several questions relating to all the options which must be considered. First is the composition and manner of selection for the Port Authority Board. Appendices B and C contain language making the Board comprise nine members; four agency heads, four public members, and the Commissioner of DOT. This seems to be a minimum that should be assigned to the task. The four agency heads will be there to assure coordination between ports and other issues and concerns, and there would be four public members to equal the four state members. However, it is possible to make several different arrangements, adding or deleting agency representatives, and adding or deleting public representatives.

The current manner of selection for Port Authority Board members is for the Governor to appoint two, and for the Cities of Portland and South Portland to appoint one each, with the Commissioner of Transportation as the fifth member and Chairman. In an expanded board, public members could be appointed by the Governor, with advise and consent of the Legislature. In order to maintain geographic balance, there could be a requirement that one member be appointed from each of four sections of the coast (for example York-Cumberland counties, Sagadahoc-Lincoln counties, Knox-Waldo counties, Hancock-Washington counties, with Kennebec and Penobscot counties included in one of the above groupings.)

It is also possible to carry the logic further and have the Port Authority Board be an elected office, with four (or more) districts made up of Legislative and Senate districts. Members could also be elected at large. If election is the chosen manner, than the Board should probably be elected by all citizens of the state, since it is all citizens who, ultimately, must pay for the activities of the Port Authority.

A final question which applies to all options is the form of the law in which changes are enacted. The Department of Transportation is authorized by Chapter 410 of Title 23 of the Maine Statutes, but the Maine Port Authority is contained in the Private and Special Laws of 1929. It would appear that there is the option of keeping the existing forms of law or changing the Port Authority to the category of general statutes. If the Port Authority is to have powers applicable throughout the coast, this latter course would be indicated. Table 6 presents a comparison of the two options.

Option 1 can be seen as entailing somewhat less expense due to savings on administrative services and the ability to use DOT in-house services such as construction engineering, right of way appraisal, and legal services. A separate port authority would have to provide its own administrative services and would have to contract for other services. Table 7 shows a tentative organization chart for such a port authority. A similar organization chart would be established for Option 1, with the only difference being the elimination of the Administration Division. Table 8 shows a tentative breakdown of the annual operating costs of the two options. The figures are speculative and may be off by as much as 25 percent. Existing operations of the Bureau of Waterways would be added onto these figures.

It should also be noted that while there are savings involved in Option 1 because of the ability to use existing divisions of DOT for some of these services, (Legal, Right of Way, Administration, etc.) there would probably need to be additional staff assigned to these divisions to assist the port authority. Thus savings would accrue as a result of the difference between the costs of contracts and the costs of increased staff at DOT.

One other feature of the two options which is important in drawing comparisons between them is somewhat intangible, but may be nonetheless real. Within the Department of Transportation ports will be treated as one of several different transportation operations which the Department has responsibility for. Moreover, two port agencies (Bureau of Waterways and the Port Authority) would still exist. A separate Port Authority, with only one mission and comprehensive responsibilities for ports, would focus more attention on port questions and provide a clearer focus of authority with regards to ports.

Option 1
(Department of Transportation)

Advantages:

Savings on Administration, other
Technical Services

Keeps responsibilities within
Executive Branch

Facilitates Intermodal planning
(connections with other trans-
portation systems)

Disadvantages:

No central location of
responsibility for ports
(2 or 3 separate agencies
within DOT)

Submerged in DOT

Option 2
(Port Authority)

Advantages:

More attention to ports

Central agency with all
responsibilities

Board would have direct control
of staff

Freedom to staff outside the
personnel system (authority
to do with is in existing
legislation)

Disadvantages:

Higher costs because of the
need to provide own adminis-
tration and to contract for
special services.

TABLE 6

PORT AUTHORITY BOARD

Executive Director

Deputy Director

Engineering

Planning and Development

Operations

Civil Engineer II

2 Planners

2 Engineering Technicians

Personnel required
to operate facilities
(would depend
on size, type,
location, etc.
of facility)

Administration

Business Manager

Accounts Clerk
Secretaries (2)

TABLE 7

Tentative Organizational Chart for Separate
Port Authority

Note: All sections, except administration, would be necessary additions to the Department of Transportation under Option 1. Secretaries would also have to be hired under Option 1.

	<u>Option 1</u>	<u>Option 2</u>
Direct Costs (salaries	\$100,000	\$125,000
Indirect Costs (overhead *(Figured at 14.4%-DOT's overhead rate for federal contracts)	\$ 18,000*	\$ 18,000**
Other services	\$ 50,000 (in DOT)	\$100,000 (by contract)
	\$164,000	\$243,000

TABLE 8

Tentative Additional Annual Operating Budgets for Options 1 and 2

Recommendations

The Department of Transportation recommends that the changes in port institutions be made so as to keep the responsibilities for ports within the Department (Option 1). It is the Department's belief that the needs which have been identified for future port planning and development can be met within the Department, with the modifications suggested in this report, and that the lower cost of this option makes it preferable to establishing an outside agency.

APPENDIX A

P. & S. L. 1929, Chapter 114

AS AMENDED

MAINE PORT AUTHORITY

Sec. 1. 'There is hereby created the "Maine Port Authority," hereinafter referred to as the "Port Authority," which shall be a body corporate and politic, having the same rights, privileges and powers as have corporations organized under the general law in addition to, and except in so far as inconsistent with, the powers herein enumerated, with the right to adopt a common seal and to establish by-laws and regulations for the management of its affairs not repugnant to its charter and the laws of this state, and with a principal place of business and office in Augusta, Maine.'

(a) District created. There is hereby created a district to be known as the "Port of Portland" which shall include the land and waters within the limits of the Cities of Portland and South Portland, together with the land and waters of Portland Harbor, including the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland.'

(b) Purposes; powers. The said Port Authority is constituted a public agency of the State of Maine for the general purpose of acquiring, constructing and operating any kind of port terminal facility within the State of Maine with all the rights, privileges and power necessary thereof. It shall have the power of buying, leasing and otherwise acquiring, holding, owning, controlling, leasing, operating and otherwise using, selling and otherwise disposing of real and personal property and such rights and easements therein as its directors may from time to time consider necessary for the purposes set forth herein. It may construct pipelines, highways, waterways, railroad facilities, storage yards and sites for warehouses and industrial establishments, and may lay out and build wharves and piers, with buildings and appurtenances, docks, elevators, public warehouses, and every kind of railroad and marine terminal facility, as, in the opinion of its directors may be desirable. Oil pipelines shall be limited to any facility in Portland Harbor and shall not extend beyond the limits of waterfront property owned or controlled by the Authority or the State of Maine as that ownership or control existed on February 28, 1974. It may lease, demise or rent any of its real or personal property. It may make any contract or agreement for the carrying on or performance of its purposes or for the more advantageous, expeditious or convenient discharge of its duties. No form of indebtedness issued or liabilities incurred by said Port Authority shall become an obligation of the State of Maine and all instruments so issued shall so state. It may acquire, hold and operate lighters and other vessels necessary or convenient. It may establish and collect the fees, rates, rentals and other compensation for the use of its property and facilities. It shall keep account of its income and expenditures, property and liabilities, in manner generally prescribed by the Department of Finance and Administration, through the Bureau of Accounts and Control, and it shall make an annual report of the condition of its property and finances to the Governor. The net income of the Port Authority may be used for any authorized purposes. Acquisition, construction, maintenance and operation of oil off-loading facilities shall be limited to sites in Portland Harbor. It may grade and surface any suitable railroad locations or traffic ways which are or may be located on lands, flats or rights therein, now owned or hereafter acquired by it under the

provisions of this Act, and may carry said ways or railroads across any railroad or railway location or public way at, above or below grade, subject however to the approval of the Department of Transportation, and may provide suitable and convenient track connections between the rails serving any pier or piers and those of any existing or proposed railroad that now reaches or hereafter may reach any port where facilities are or may be operated by said Port Authority. All piers held or controlled by it shall also be accessible and open to all teaming and lighterage traffic, subject to such regulations as its directors may from time to time make. Upon application to it any railroad company that now reaches or hereafter may reach any port where facilities are or may be operated by it, either by its own rails or under trackage or traffic contract or agreement with any other railroad company, may be provided by it with a track connection with the tracks serving such pier or piers. Bonds or other securities issued by the Port Authority shall at all times be free from taxation by the State of Maine.

The Maine Port Authority is authorized and directed to construct in the Town of Lincolnville, Waldo County, a floating dock and slip as a public landing for small boats, to be constructed adjacent to the landing place to be constructed for the ferry service for North Haven, Vinalhaven, Islesboro and Swan's Island, as provided by the private and special laws of 1957, chapter 190. Such dock and slip shall be maintained by the Town of Lincolnville.

(c) **May establish rates with carriers.** The Port Authority may establish by contract or otherwise through and interchange rates with carriers connecting with or using its facilities, and may make contracts with any public utility as defined in chapter 62 of the revised statutes, and acts amendatory thereof and additional thereto, for the use by said Port Authority of any facility of such public utility for the transportation of property as defined in said chapter 62 and acts amendatory thereof and additional thereto, or for joint use, or for use by such public utility for the furtherance of the purposes of this act, and acts amendatory thereof and additional thereto, of any facilities owned by said Port Authority or for the joint use thereof.

(d) **May file complaints against any public utility.** The Port Authority shall have the right, in accordance with the procedure prescribed in chapter 62 of the Revised Statutes and acts amendatory thereof and additional thereto, to file complaint against any public utility or public utilities engaged within the territorial limits of any port where facilities are or may be operated by said Port Authority in the transportation of property delivered or destined for delivery at or routed over the property of the Port Authority, representing in such complaint that said public utilities have failed to agree upon joint use of the facilities described in section 50 of said chapter 62 belonging to them or either of them, and by such complaint to invoke the jurisdiction conferred in such cases by said section 50 upon the Public Utilities Commission upon its own motion or upon complaint of any public utility affected; and said commission may, in accordance with the procedure and conditions prescribed in said section, issue any order for such joint use by said public utilities and prescribe the compensation, terms and conditions therefor as if said proceeding had been initiated upon its own motion or upon complaint of any such public utility.

(With the consent of the Governor, first obtained, it may, by vote of its directors:

1. Make any contract not otherwise authorized relating to the purposes, duties, rights, powers and privileges enumerated in chapter 114 of the private and special laws of 1929, as amended.

2. Convey, sell, lease, demise or rent any of its property not required in the discharge or performance of its duties; hire, lease and rent from others any property deemed desirable for its purposes not otherwise authorized in said chapter 114, as amended.

3. Receive by gift, grant, devise or bequest any gift of money or real or personal property not otherwise authorized or permitted.

4. Receive from the United States Government or any of its divisions, agencies, districts or commissions, any license, grant, gift, donation or benefit with or without terms or conditions.

5. Borrow money, issue, sell and dispose of its debentures, notes or bonds, unsecured or secured by pledge of any part of its revenues not required for maintenance and operation and the discharge, performance and furtherance of its duties. Such bonds, debentures and notes shall bear interest at rates specified and upon conditions and terms enumerated.

6. Establish and set aside and maintain sinking funds for the redemption of its obligations.

(All debentures, notes and bonds of said Authority, issued as aforesaid, with the consent of the Governor, shall be legal investments for the savings bank of this State.

(e) **Ferry service for North Haven, Vinalhaven, Islesboro, Swan's Island and Long Island Plantation.** It shall be the duty of the Department of Transportation to operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from said towns, and the Department of Transportation may operate such ferry line or lines to and from Long Island Plantation.

(f) **Ferry service between mainland and islands in Casco Bay.** Whenever it is determined by the Public Utilities Commission that ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the Department of Transportation shall take such means as shall be necessary to provide such service, either through contract with private operators or by acquiring and operating the necessary facilities as provided herein.

(g) **Charter service.** The Department of Transportation may operate a special charter service to Hurricane and Matinicus Islands in Knox County, or to ports added or to be added by legislative enactment. The operation of such charter service shall not interfere nor curtail in any way the schedule of the Maine State Ferry Service to ports named in chapter 190 of the private and special laws of 1957 or ports added or to be added by legislative enactment.

(h) **Agreements.** The Port Authority and the Department of Transportation may enter into such agreements as the directors and commissioners deem to be in the best interests of the State of Maine for the department to operate any or all facilities owned by the Port Authority. Any such agreements shall set forth the terms and conditions of the operation and be subject to all the terms and conditions of any trust indenture and covenants relating to revenue bonds. The Port Authority or the Department of Transportation may establish, own, operate and maintain such navigational aids in coastal waters adjacent to the shores and harbors of the State of Maine as the directors or commissioner deem essential for safety. Any such navigational aids shall conform to and be consistent with any and all federal regulation.

(i) **Bonds.** The Maine Port Authority is authorized to provide by resolution from time to time for the issuance of bonds for the purpose of funding the establishment, acquisition or effectuation of port terminal facilities and things incidental thereto, for construction of proposed facilities and improvement of existing or acquired facilities and for the fulfillment of other undertakings which it may assume. The bonds of the Maine Port Authority shall not constitute a debt of the State or of any agency or political subdivision thereof, but shall be payable solely from the revenue of the Authority, and neither the faith or credit nor taxing power of the State of Maine or any political subdivision thereof is pledged to payment of the bonds. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable. In case any director whose signature appears on the bond or coupons shall cease to be a director before the delivery of such bonds, such signature shall be valid and sufficient for all purposes as if such director had remained a director until such delivery. The Authority may by resolution authorizing prospective issues provide:

1. The manner of executing the bonds and coupons;
2. The form and denomination thereof;
3. Maturity dates;
4. Interest rates thereon;
5. For redemption prior to maturity and the premium payable therefor;
6. The place or places for the payment of interest and principal;
7. For registration if the Authority deems such to be desirable;
8. For the pledge of all or any of the revenue for securing payment;
9. For the replacement of lost, destroyed or mutilated bonds;
10. For the setting aside of reserve and sinking funds and the regulations and disposition thereof;
11. For limitation on the issuance of additional bonds;
12. For the procedure, if any, by which the contract with the bondholder may be abrogated or amended;
13. For the manner of sale and purchase thereof;
14. For covenants against pledging of any of the revenue of the Maine

Port Authority;

15. For covenants fixing and establishing rates and charges for use of its facilities and services made available so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance, meet and pay the principal and interest of all bonds as they severally become due and payable; for the creating of such revenues for the principal and interest of all bonds and for the meeting of contingencies and the operation and maintenance of its facilities as the directors shall determine;

16. For such other covenants as to rates and charges as the directors shall determine;

17. For covenants as to the rights, liability, powers and duties arising upon the breach by the Maine Port Authority of any covenant, condition or obligation;

18. For covenants as to the bonds to be issued and as to the issuance of said bonds in escrow and otherwise and as to the use and disposition of the proceeds thereof;

19. For covenants as to the use of its facilities and the maintenance and replacement thereof and the insurance to be carried thereon and the use and disposition of insurance money;

20. For the issuance of such bonds in series thereof;

21. For the performance of any and all acts as may be in the discretion of the directors necessary, convenient or desirable to secure such bonds, as will tend to make the bonds more marketable; and

22. To issue bonds on terms and conditions so as to effectuate the purpose of this Act.

All moneys received from any bonds issued shall be applied solely for the establishment, acquisition or effectuation of port terminal facilities and things incidental thereto, for the construction of proposed facilities, improvement of existing or acquired facilities and the fulfillment of other undertakings which are within the power of the Authority; and there is hereby created a lien upon such moneys until so applied in favor of the bondholders or any trustee as may be provided in respect of such bonds.

In the discretion of the directors, the bonds may be secured by a trust indenture by and between the Maine Port Authority and a corporate trustee which may be any trust company or bank having the powers of a trust company located either within or outside the State of Maine. Such a trust indenture may pledge or assign the revenues of the Maine Port Authority or any part thereof.

Provisions may be made for protecting and enforcing the rights and remedies of the bondholders, including covenants as to acquisition of property, construction, maintenance, operation and repair, insurance and the custody, security and application of all moneys.

Any trust company or bank having the powers of a trust company and located either within or outside the State of Maine may act as depositories of the proceeds of the bonds and revenue and may furnish such indemnity or pledge such securities as may be required by the Maine Port Authority.

Any indenture may set forth the rights and remedies of the bondholders and the trustee and may restrict the individual right of action of bondholders and may contain such other provisions as the directors may deem reasonable and proper for the security of bondholders.

Expenses incurred in carrying out any trust indenture may be treated as a part of maintenance.

The purposes of this Act being public and for the benefit of the people of the State of Maine, the Maine Port Authority Bonds shall at all times be free from taxation by the State of Maine.

The Maine Port Authority may issue revenue refunding bonds for the purpose of refunding said revenue bonds issued under this Act. The issuance of any refunding bonds shall be the same as provided for herein as relates to revenue bonds.

In the event of default on the bonds and in the event such default continues for a period of 3 months, action may be brought to enforce the rights of the bondholders by insuring that the operation by the directors be in conformity with the covenants of the bonds or indenture.

Sec. 2. Directors; appointment, president, vacancy. The Port Authority shall consist of a board of 5 directors. Two directors shall be appointed by the Governor, each to serve for 3 years, except the first term one shall be appointed for one year and one for two years, one director shall be appointed by the city council of Portland; and one director shall be appointed by the city council of South Portland. In the event the City of South Portland or the City of Portland fail to appoint a director within 60 days after notice from the office of the Governor, the Governor shall make such appointment forthwith. The other director shall be the Commissioner of Transportation who shall serve as chairman of the board of directors and president. The directors shall elect a treasurer and such other officers as the board of directors may from time to time deem necessary. Any vacancy shall be filled for the unexpired term by the Governor or by the city council according as the vacancy occurs.

(a) **Meetings of directors; compensation.** All the powers of the Port Authority may be exercised by the board of directors in lawful meeting and a majority of the directors shall be necessary for a quorum. Regular meetings of the board of directors may be established by bylaw and no notice need be given to the directors of such regular meeting. Each director shall receive from the Port Authority \$25 for each in attendance at an official meeting, except the president of the board shall serve without pay, and the director shall be reimbursed for necessary expenses incurred in the discharge of his duties as such director. The board of directors shall determine and fix the salary of all other officers and employees of the Port Authority.

(b) **Actions at law or in equity.** Actions at law or in equity in the courts of this State or before the Public Utilities Commission or Industrial Accident Commission may be brought by or against the Port Authority as if it were a private corporation, except that its property may not be attached, trustee or sequestered, but if a judgment recovered against it is not paid within 30 days, its personal property may be seized on execution.

Sec. 3. Property of the State. All real and personal property owned by and

in the name of the Port Authority shall be considered as property of the State of Maine and entitled to the privileges and exemptions of property of the State of Maine, except insofar as waived by the duly authorized contract, or other written instrument of the Port Authority or by this Act. The Port Authority and the Department of Transportation shall agree upon and from time to time review the preferred status of property held or controlled by them and necessary to either body's performing its statutory duty and shall arrange to sell, exchange, give or otherwise transfer title or possession of various properties between themselves consistent with sound business management and as may serve the best interest of the State of Maine in their opinion; and shall be authorized to execute and record a deed or lease between them to effectuate the transfer. The Governor may grant to the Port Authority such rights in submerged land owned by the State and located within harbor limits as may be necessary for the Port Authority to fulfill its powers, duties and obligations.

Sec. 4

(a) **Development, employees.** The Port Authority, in cooperation with such state agencies charged with responsibilities for port development, may cause plans to be made for the development of ports and harbors; and for the purposes of carrying out the duties of the Port Authority, it shall have immediate charge of any undeveloped lands under the sea and flats now or hereafter owned by the State within Portland Harbor. The Port Authority shall employ such engineers, clerks, attorneys, agents, assistants and other employees as it may deem necessary and shall determine their duties and compensation.

(b) **Maps, plans, etc.** The Port Authority shall keep at its office maps, charts, plans and documents relating to the lands and waters under their charge. The directors shall at all times have access to any other maps, charts, plans and documents relating to said waters and lands, in the office or custody of any other public board, commission or official.

(c) **Conveyances authorized.** The Port Authority shall take all proper measures to obtain from the city of Portland or the city of South Portland or both, without expense to the Port Authority therefor, a conveyance of all the present right, title and interest of the cities or either of them in and to flats and rights of such cities or either of them, which, in the opinion of its directors, are required for the development contemplated by this act, and the cities of Portland and South Portland, or either of them, are hereby authorized to make such conveyance, and also in furtherance of the development of the port to make conveyance to the Port Authority, but only for maritime or commercial improvement, of any shore lands owned by such cities elsewhere, acquired either by purchase or taking.

(d) **Plans for adequate piers, etc.** It shall be the duty of the directors to make, and so far as may be practicable, to put into execution, comprehensive plans providing on the lands now owned or hereafter acquired by the Port Authority at the port of Portland adequate piers, capable of accommodating the largest vessels, and in connection with such piers, suitable highways, waterways, railroad connections and storage yards, and sites for warehouses and industrial establishments.

(e) **Surveys may be made.** The directors shall give consideration to the

development of ports in this state and, when authorized by the Governor, may cause surveys to be made; said directors shall consult with and advise representatives of such communities or districts as may desire to institute proceedings for local maritime and port development; they may make recommendations to the legislature in respect of the same and to the municipal officers of such cities, town or districts in which such ports are located.

Sec. 5. Violations of act. The supreme judicial court shall have jurisdiction in equity, upon information filed by the attorney general, of violations of the provisions of this act.

Sec. 6. Procedure in taking property by right of eminent domain. In order to take any property by right of eminent domain, the Port Authority shall within ninety days after voting to take any lands or easements therein, file and cause to be recorded in the registry of deeds for the county in which the property to be taken is situated, a description thereof sufficiently accurate for identification, and the names of owners, if known, with a general statement of the purposes for which the same was taken, signed by the proper officers of the Port Authority. Notice of such proceedings shall be given to the owners thereof, if known, and the said notice shall be published once a week for three weeks in a newspaper regularly published in the county where the said lands or easements are situated. The recording shall operate as a taking of the real estate and of the rights and easements therein described. No taking shall be valid unless it is recorded in accordance with the provisions of this section. When, for any reason, the Port Authority fails to acquire the property authorized to be taken, and which is described in such description, or when the location or description or both so recorded, is defective or uncertain, the Port Authority may at any time correct and perfect such description or location and file a new description or location in place thereof, and in such case, there shall be liability 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 there shall be no liability for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys and borings, until the expiration of ten days from said filing, whereon possession may be had of all said lands or interests therein or easements so taken.

The Maine Port Authority may take for public use, for its purposes, any property, right, easement, use, interest or estate in any wharf, dock, pier or site, including related approaches, abutments and appurtenances, ferry line, boat or landing area already appropriated to or charged with a public use, under the power of eminent domain, provided that this power shall not be exercised except at the Port of Portland and the port at Bar Harbor; but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use; provided, however, that no such property, right, easement, use, interest or estate already appropriated to or charged with a public use shall be taken without contract with or the consent of the owner, operator, possessor or other person controlling, managing or operating the same, unless and until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to

said authority for the purposes of this Act, and that the taking by said authority is in the public interest.

Any person, firm or corporation sustaining damage as aforesaid, under said act creating said Authority as amended, and failing to agree with the directors as to the amount thereof, may have the same assessed and determined in the manner provided by law in the case of land taken for the laying out of highways, on application at any time within 3 years after the taking of such land, right, easement, use, interest or estate therein, but no such application shall be made after the expiration of the said 3 years.

Sec. 7. May acquire use of terminal facilities by petition to Public Utilities Commission. If upon petition by the Port Authority the Public Utilities Commission finds it to be in the public interest and to be practicable without substantially impairing the ability of any common carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use, until such time as the common carrier requires such terminal facilities for its own business, in common with such carrier, of any such terminal facilities, including docks, piers, warehouses, freight sheds and grain elevators, and tracks to said facilities, by the Port Authority for the transportation of property, as defined in chapter 55 of the Revised Statutes of 1916 and amendments thereof, delivered or deliverable at or routed over the property of the Port Authority as the common carrier requires such terminal facilities for its own business as the Port Authority and such carrier may agree upon, or in the event of a failure to agree, as the Public Utilities Commission may fix as just and reasonable for the use so required. Such compensation shall be paid or adequately secured before the enjoyment or the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to the Port Authority, and the carrier whose terminal facilities are required to be used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to the Port Authority shall be entitled to recover, by suit or action against the Port Authority, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be. The provisions of this section are subject to the exercise of any jurisdiction which may reside in the Interstate Commerce Commission.

Sec. 8. Provisions and restrictions of P. & S. L., 1917, c. 192, not to control powers created by this act. The provisions, restrictions and requirements of chapter one hundred and ninety-two of the private and special laws of nineteen hundred and seventeen, entitled, "An Act to Create a Board of Harbor Commissioners for the Harbor of Portland and Define its Powers," shall not control, limit, govern, affect or apply to the powers, acts and duties created or established by this act and imposed upon or entrusted to the Port Authority or persons acting by or under its authority and in the event of conflict between the provisions of the act entitled "An Act to Create a Board of Harbor Commissioners for the Harbor of Portland and Define its Powers" and this act entitled, "An Act to Create the Port of Portland Authority," the provisions of the former act, entitled "An Act to Create a Board of Harbor Commissioners for the Harbor of Portland and Define its Powers," that are in such conflict and inconsistent with this act, shall be suspended and the provisions of this act shall

control and be effective, but nothing herein shall be construed as affecting or modifying the provisions of chapter one hundred and ninety-two of the private and special laws of nineteen hundred and seventeen, so far as the provisions of such act relate to persons, firms, corporations, boards or commissions other than the Port Authority.

Sec. 9. Inconsistent acts suspended or superseded. Any other act or parts of acts that are in conflict with or inconsistent with the provisions of this act, are hereby suspended and superseded, so far as they relate to the provisions of this act, or any part thereof.

Sec. 10. Chapter eight-four of the private and special laws of nineteen hundred and nineteen, as amended by chapter one hundred and twenty-three of the private and special laws of the special session of nineteen hundred and nineteen, as further amended by chapter one hundred and eighteen of the private and special laws of nineteen hundred and twenty-three, as further amended by chapter ninety-nine of the private and special laws of nineteen hundred and twenty-five, entitled "An Act to Provide for the Building of Public Wharves and for the Establishment of Adequate Port Facilities and for the Advancement of Commerce," is hereby repealed, provided however, that such repeal shall not be effective until the organization of "Port of Portland Authority" hereunder and that the directors of the port of Portland shall continue to exist as an agency of the state of Maine until they shall have made the conveyances, assignments, etc., which this act provides shall be made by them and further provided that the act so declared to be repealed remain in force for the preservation of all rights and their remedies existing by virtue of it, and so far as it applies to any office, trust, judicial proceeding, right contract, limitation, or event, already affected by it.

Sec. 11. Invalidity of any part not to affect validity of remainder of act. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 12. Conflict of interest. No member, officer or employee of the Maine Port Authority shall acquire any interest, direct or indirect, in any contract or proposed contract of said Authority nor shall any member, officer or employee participate in any decision on any contract entered into by the Authority if he has any interest, direct or indirect, in any firm, partnership, corporation or association which will be party to such contract or financially involved in any transaction with the Authority, except this prohibition shall not be applicable to the acquisition of any interest in notes or bonds of the Authority issued in connection with any contracts or agreements of the Authority or to the execution of agreements by banking institutions for the deposit or handling of Authority funds in connection with any contract or to act as trustee under any trust indenture, or to utility services, the rates for which are fixed or controlled by a governmental agency.

Sec. 13. Environmental laws. Facilities acquired, constructed, operated or

(maintained under the Maine Port Authority law, and land upon which the facilities are located shall be subject to such of the environmental laws of the State of Maine as would be applicable to private enterprise were the facilities owned or operated by the private sector and further providing that the Maine Department of Transportation and the Maine Port Authority, its successors or assigns, shall be subject to the provisions of the Oil Discharge Prevention and Pollution Control Act.

TITLE 23

4207. Railroads; lease or purchase of certain railroad lines by the Department of Transportation.

§ 4202. Short title

This Act shall be known as and may be cited as the Maine Transportation Act.

§ 4203. Definitions

The following terms, when used in this Act, shall have the following meanings, unless the context otherwise requires:

1. **Commissioner.** "Commissioner" means the Commissioner of Transportation.

2. **Department.** "Department" means the Department of Transportation.

3. **Transportation.** "Transportation" means any form of transportation for people or goods within, to or from the State, whether by highway, air, water or rail.

§ 4204. Declaration of policy

It is declared to be the policy of the State of Maine that adequate, safe and efficient transportation facilities and services are essential to the economic growth of the State and the well-being of its people and that the planning and development of such facilities and services shall be coordinated by a state department of transportation with overall responsibility for balanced transportation policy and planning.

§ 4205. Department; commissioner

There is created and established the Department of Transportation to consist of a Commissioner of Transportation appointed by the Governor, subject to review by the Joint Standing Committee on Transportation and to confirmation by the Legislature, who shall serve at the pleasure of the Governor, and the following as heretofore created and established:

1. The Department of Aeronautics;
2. The State Highway Commission;
3. The Economic Advisory Board;
5. The Scenic Highway Board;
6. The Highway Safety Committee; and
7. The Vehicle Equipment Safety Commission.

§ 4206. Duties of commissioner

1. **Duties.** The commissioner shall have the following general powers, duties and responsibilities:

A. To develop for the State, comprehensive, balanced transportation policy and planning as will meet the present and future needs for adequate, safe and efficient transportation facilities and services;

B. To assist in the development and operation of transportation facilities

TITLE 23

and services in the State;

C. To promote the coordinated and efficient use of all available and future modes of transportation;

D. To exercise and perform such other functions, powers and duties as shall have been or may be from time to time conferred or imposed by law, including all the functions, powers and duties assigned and transferred to the Department of Transportation from and as now imposed by law or otherwise conferred on these units designated in section 4205;

E. To appear as chief spokesman for the State before such national, regional, state and local agencies, groups or organizations including regulatory agencies as he deems necessary to enhance and promote the transportation interest of Maine, to counsel, advise and participate for the furtherance of the intent and purpose of this chapter;

F. To stimulate active support for and to develop, administer and promote transportation safety action programs throughout the State of Maine and to formulate and recommend to the Legislature specific measures for these purposes;

G. To establish a system of scenic highways in the State of Maine and preserve the scenic values along the system of highways; to develop and adopt procedures for the designation and development of that system of scenic highways and the preservation of the scenic value in the highway corridor and in the implementation of this intent and purpose consider the scenic value, safety aspects, economic implications, preservation of scenic value and compatibility with other national, regional and local conservation plans;

H. To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation;

I. To accept and receive and be the sole administrator of all federal or other moneys for and in behalf of this State or any political subdivision thereof now or hereafter available for purposes of transportation or which would further the intent and specific purposes of this chapter.

2. **Organization.** The commissioner shall organize the department into such bureaus, divisions and other units as he deems necessary to fulfill the duties of the department, provided at all times there shall be the following boards, bureaus and staff:

- A. Bureau of Administrative Services;
- B. Bureau of Transportation Planning and Services;
- C. Bureau of Aeronautics;
- D. Bureau of Highways;
- E. Bureau of Waterways; and
- F. Legal Services Division.

3. **Advisory boards.** The commissioner, subject to approval by the

I. ADDITIONS TO PORT AUTHORITY LAW

Sec. 1. (Paragraph (i) Bonds of Port Authority

i. Bonds of the Port Authority. The Maine Port Authority is authorized to provide by resolution from time to time for the issuance of bonds for the purpose of funding the establishment, acquisition or effectuation of port terminal facilities and things incidental thereto, for construction of proposed facilities and improvement of existing or acquired facilities and for the fulfillment of other undertakings which it may assume. The Maine Port Authority may, at the discretion of the directors, issue bonds for the purpose of providing the state matching share for any federal port assistance program, including, but not limited to, those of the Economic Development Administration. Facilities funded in whole or in part by the Port Authority shall be considered property of the Port Authority. The bonds of the Maine Port Authority shall not constitute a debt of the State or of any agency or political subdivision thereof, but shall be payable solely from the revenue of the Authority and neither the faith or credit nor taxing power of the State of Maine or any political subdivision thereof is pledged to payment of the bonds. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable. In case any director whose signature appears on the bond or coupons shall cease to be a director before the delivery of such bonds, such signature shall be valid and sufficient for all purposes as if such director had remained a director until such delivery. The Authority may by resolution authorizing prospective issues provide:

At the end of paragraph i, insert:

Upon determination that a proposed port facility is of such nature that it provides substantial overall benefit to the people and commerce of the State of Maine and that such a facility cannot be funded solely through revenues generated by the use of the facility, the Port Authority may by vote of the directors as specified in Section 2 of this Chapter, recommend to the Governor and Legislature that bonds constituting an obligation on the State of Maine be issued for the funding of such facility. The Legislature shall act upon such recommendation no later than that session immediately following the making of the recommendation. The Port Authority shall provide to

*Only sections with changes are included, suggested changes are in italics.

to the Legislature and Governor all relevant data to substantiate the determination of substantial benefit and inability to finance through revenues.

Sec. 2. Directors; appointment, president, vacancy. The Port Authority shall consist of a board of 9 directors. Four directors shall be appointed by the Governor, each to serve for 3 years, except the first term one shall be appointed for one year and two for two years. The Commissioners of the Departments of Marine Resources, Conservation, and Environmental Protection shall serve as members of the Board. The other director shall be the Commissioner of Transportation who shall serve as chairman of the board of directors and president. The directors shall elect a treasurer and such other officers as the board of directors may from time to time deem necessary. Any vacancy shall be filled for the unexpired term by the Governor or by the city council according as the vacancy occurs.

(a) Meetings of directors; compensation. All the powers of the Port Authority may be exercised by the board of directors in lawful meeting and a majority of the directors shall be necessary for a quorum. Regular meetings of the board of directors may be established by bylaw and no notice need be given to the directors of such regular meeting. Each director shall receive from the Port Authority \$25 for each in attendance at an official meeting, except the president of the board shall serve without pay, and the director shall be reimbursed for necessary expenses incurred in the discharge of his duties as such director. The board of directors shall determine and fix the salary of all other officers and employees of the Port Authority.

(b) Actions at law or in equity. Actions at law or in equity in the courts of this State or before the Public Utilities Commission or Industrial Accident Commission may be brought by or against the Port Authority as if it were a private corporation, except that its property may not be attached, trustee or sequestered, but if a judgment recovered against it is not paid within 30 days, its personal property may be seized on execution.

Sec. 6. Procedure in taking property by right of eminent domain. In order to take any property by right of eminent domain, the Port Authority shall within ninety days after voting to take any lands or easements therein, file and cause to be recorded in the registry of deeds for the county in which the property to be taken is situated, a description thereof sufficiently accurate for identification, and the names of owners, if known, with a general statement of the purposes for which the same was taken, signed by the proper officers of the Port Authority. Notice of such proceedings shall be given to the owners thereof, if known, and the said notice shall be published once a week for three weeks in a newspaper regularly published in the county where the said lands or easements are situated. The recording shall operate as a taking of the real estate and of the rights and easements therein described. No taking shall be valid unless it is recorded in accordance with the provisions of this section. When, for any reason, the Port Authority fails to acquire the property authorized to be taken, and which is described in such description, or when the location or description or both so recorded, is defective or uncertain, the Port Authority may at any time correct and perfect such description or location and file a new description or location in place thereof, and in such case, there shall be liability 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 there shall be no liability for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys and borings, until the expiration of ten days from said filing, whereon possession may be had of all said lands or interests therein or easements so taken.

The Maine Port Authority may take for public use, for its purposes, any property, right, easement, use, interest or estate in any wharf, dock, pier or site, including related approaches, abutments and appurtenances, ferry line, boat or landing area already appropriated to or charged with a public use, under the power of eminent domain, but consideration shall be given to such existing public use and all reasonable efforts shall be made to interfere no more than may be reasonably necessary with the business, service or functions of the owner, operator, possessor or other person controlling, managing or operating such existing public use; provided, however, that no such property, right, easement, use, interest or estate already appropriated to or charged with a public use shall be taken without contract with or the consent of the owner, operator, possessor or other person controlling, managing or operating the same, unless and until the Public Utilities Commission, after notice and hearing, shall have determined that such property, right, easement, use, interest or estate appropriated to or charged with a public use is necessary to said authority for the purposes of this Act, and that the taking by said authority is in the public interest.

Any person, firm or corporation sustaining damage as aforesaid, under said act creating said Authority as amended, and failing to agree with the directors as to the amount thereof, may have the same assessed and determined in the manner provided by law in the case of land taken for the laying out of highways, on application at any time within 3 years after the taking of such land, right, easement, use, interest or estate therein, but no such application shall be made after the expiration of the said 3 years.

II. ADDITIONS TO DOT LAW

TITLE 23

§4206. Duties of commissioner

H. To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation, (to prepare comprehensive plans for the development of Maine ports including the determination of future harbor maintenance and facilities and services needs; and to assist communities in determining the general economic and engineering feasibility of port development project).

II. ADDITIONS TO PORT AUTHORITY LAW

Sec. 1.

(e) Ferry service for North Haven, Vinalhaven, Islesboro, Swan's Island and Long Island Plantation. It shall be the duty of the *Maine Port Authority* to operate a ferry line or lines between the mainland and the Towns of North Haven, Vinalhaven, Islesboro and Swan's Island for the purpose of transporting vehicles, freight and passengers to and from said towns, and the Department of Transportation may operate such ferry line or lines to and from Long Island Plantation.

(f) Ferry service between mainland and islands in Casco Bay. Whenever it is determined by the Public Utilities Commission that ferry transportation for persons and property between the mainland and the islands in Casco Bay located within the limits of the City of Portland and the Town of Cumberland can no longer feasibly be provided by private operators at rates established by said Public Utilities Commission, the *Maine Port Authority* shall take such means as shall be necessary to provide such service, either through contract with private operators or by acquiring and operating the necessary facilities as provided herein.'

(g) Charter service. The *Maine Port Authority* may operate a special charter service to Hurricane and Matinicus Islands in Knox County, or to ports added or to be added by legislative enactment. The operation of such charter service shall not interfere nor curtail in any way the schedule of the Maine State Ferry Service to ports named in chapter 190 of the private and special laws of 1957 or ports added or to be added by legislative enactment.

(h) The Maine Port Authority shall operate and maintain the Maine State Pier in Portland, and may exercise all functions related to cargo handling and promotion as exercised by the Department of Transportation as of date of enactment.

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(b) Actions at law or in equity. Actions at law or in equity in the courts of this State or before the Public Utilities Commission or Industrial Accident Commission may be brought by or against the Port Authority as if it were a private corporation, except that its property may not be attached, trustee or sequestered, but if a judgment recovered against it is not paid within 30 days, its personal property may be seized on execution.

Sec. 4.

(a) Development, employees. The Port Authority, in cooperation with such state agencies charged with responsibilities for port development, shall cause plans to be made for the development of ports and harbors, and shall make and submit to the Governor and Legislature, at least biannually, a plan for the development of Maine ports and harbors. The Plan shall include a review of the port related activities in the state and an identification of future needs in the areas of dredging and harbor maintenance, and development of new and improved facilities and services for port and harbor users, and for the purposes of carrying out the duties of the Port Authority, it shall have immediate charge of any undeveloped lands under the sea and flats now or hereafter owned by the State within Portland Harbor. The Port Authority shall employ such engineers, clerks, attorneys, agents, assistants and other employees as it may deem necessary and shall determine their duties and compensation.

(b) Maps, plans, etc. The Port Authority shall keep at its office maps, charts, plans and documents relating to the lands and waters under their charge. The directors shall at all times have access to any other maps, charts, plans and documents relating to said waters and lands, in the office or custody of any other public board, commission or official.

(c) Conveyances authorized. The Port Authority shall take all proper measures to obtain from the city of Portland or the city of South Portland or both, without expense to the Port Authority therefor, a conveyance of all the present right, title and interest of the cities or either of them in and to flats and rights of such cities or either of them, which, in the opinion of its directors, are required for the development contemplated by this act, and the cities of Portland and South Portland, or either of them, are hereby authorized to make such conveyance, and also in furtherance of the development of the port to make conveyance to the Port Authority, but only for maritime or commercial improvement, of any shore lands owned by such cities elsewhere, acquired either by purchase or taking.

(d) Plans for adequate piers, etc. It shall be the duty of the directors to make, and so far as may be practicable, to put into execution, comprehensive plans providing on the lands now owned or hereafter acquired by the Port Authority at the port of Portland adequate piers, capable of accommodating the largest vessels, and in connection with such piers, suitable highways, waterways, railroad connections and storage yards, and sites for warehouses and industrial establishments.

(e) Surveys may be made. The directors shall give consideration to the development of ports in this state and, when authorized by the Governor, may cause surveys to be made; said directors shall consult with and advise representatives of such communities or districts as may desire to institute proceedings for local maritime and port development; they may make recommendations to the legislature in respect of the same and to the municipal officers of such cities, town or districts in which such ports are located.

(f) The Port Authority shall establish and implement a program of assistance to communities which are engaged in or planning for port and harbor improvements. Such assistance may include both engineering and economic analyses sufficient to aid in determining the general feasibility of proposed projects.

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