

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 593

H. P. 465

House of Representatives, February 4, 1971

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Henley of Norway.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Authorize Pollution-control Facilities to Be Financed by the Issue of Revenue Obligation Securities under the Municipal Industrial and Recreation Obligations Act.

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

Whereas, many corporations are finding it difficult or impossible to obtain commitments for the financing of pollution-control facilities required under the Revised Statutes, Title 38, chapter 3, as amended, without the assistance which would be provided if such facilities could be financed under the Revised Statutes, Title 30, chapter 242, as amended; and

Whereas, widespread failure to comply with the October 1, 1971 deadline for completing arrangements for administration and financing of such facilities imposed by Title 38, section 451, subsection 1, paragraph B, would tend to create delay in the State's pollution-control program; and

Whereas, it is essential to the health and welfare of the citizens of this State that pollution control be achieved at the earliest possible time and that all possible assistance to the financing and completion of pollution-control facilities be given immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 30, § 5325, sub-§§ 1, 4, 6 and 7, amended. Subsections 1, 4, 6 and 7 of section 5325 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, are amended to read as follows:

1. Revenue-producing industrial-commercial, pollution-control or recreational facilities. To acquire, construct, reconstruct, renew and replace industrial-commercial, pollution-control, ~~and~~ recreational and combined projects within or partly within the corporate limits of the municipality;

4. Acquisition of property. The municipal officers are authorized and empowered to acquire from funds provided under the authority of this chapter such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the State as it may deem necessary or convenient for the construction or operation of any industrial-commercial, pollution-control, ~~or~~ recreational or combined project, upon such terms and conditions as they shall deem reasonable and proper, and to dispose of any of the foregoing in the exercise of its powers and the performance of its duties ~~hereunder~~ under this chapter;

6. Federal contracts. To enter into contracts with the Government of the United States or any agency or instrumentality thereof, or with any other municipality providing for or relating to the revenue-producing industrial-commercial, pollution-control or recreational facility; provided, in the case of pollution-control facilities, that the consent of the Environmental Improvement Commission is first obtained, such commission being authorized to grant such consent notwithstanding Title 38, section 362;

7. Federal aid. To accept from any authorized agency of the Federal Government loans or grants for the planning, construction or acquisition of any revenue-producing industrial-commercial, pollution-control or recreational facility and to enter into agreements with such agency respecting any such loans or grants, and to receive and accept aid and contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants and contributions may be made; provided, in the case of pollution-control facilities, that the consent of the Environmental Improvement Commission is first obtained, such commission being authorized to grant such consent notwithstanding Title 38, section 362; and

Sec. 2. R. S., T. 30, § 5326, sub-§§ 2-A and 3-A, additional. Section 5326 of Title 30 of the Revised Statutes, as amended, is further amended by adding 2 new subsections, to read as follows:

2-A. Pollution-control project. "Pollution-control project" means any building, structure, machinery, equipment or facilities, including transportation equipment or facilities, which may be deemed necessary for preventing, avoiding, reducing, controlling, abating or eliminating pollution of the air, the water or the earth caused or to be caused by any proposed or existing industrial-commercial, recreational or other facility, together with all lands,

property, rights, rights-of-way, franchises, easements and interests in lands which may be acquired by the municipality for the construction or operation of the project.

3-A. Combined project. "Combined project" means any combination of an industrial-commercial project, a pollution-control project and a recreational project undertaken by a single municipality for a common lessee or group of lessees.

Sec. 3. R. S., T. 30, § 5326, sub-§ 4, amended. Subsection 4 of section 5326 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended to read as follows:

4. Project. "Project" means industrial-commercial project, pollution-control project, ~~or~~ recreational project or combined project as the context may permit or require.

Sec. 4. R. S., T. 30, § 5326, sub-§ 5, amended. The first sentence of subsection 5 of section 5326 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended to read as follows:

"Cost" as applied to a revenue-producing industrial-commercial, pollution-control or recreational facility shall include the purchase price of any such facility, the cost of construction, the cost of all labor, materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the municipal officers, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses as may be necessary or incident to the financing ~~herein~~ authorized.

Sec. 5. R. S., T. 30, § 5328, sub-§ 3, amended. The last sentence of subsection 3 of section 5328 of Title 30 of the Revised Statutes, as enacted by section 3 of chapter 569 of the public laws of 1969, is repealed as follows:

~~In any event no project shall be approved and no certificate of approval shall be issued until the project has received and secured all applicable licenses, or it is determined that none is required, from the Environmental Improvement Commission~~

Sec. 6. R. S., T. 30, § 5328, sub-§ 4, ¶¶ A, C and D, amended. Paragraphs A, C and D of subsection 4 of section 5328 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, are amended to read as follows:

A. The project will make a significant contribution to the economic growth of ~~or the control of pollution in the State;~~

C. Adequate provision is being made to meet any increased demand upon public facilities that might result from such project; ~~and~~

D. In cases where it is proposed to relocate an industrial or recreational facility existing in the State, there is a clear economic justification for such relocation ; and

Sec. 7. R. S., T. 30, § 5328, sub-§ 4, ¶ E, additional. Subsection 4 of section 5328 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended by adding a new paragraph E to read as follows :

E. The project has been planned in a manner not inconsistent with the requirements of the Environmental Improvement Commission and it is reasonable to expect that any licenses for the project required from such commission will be obtainable in due course.

Sec. 8. R. S., T. 30, § 5329, sub-§§ 5 and 6, amended. Subsections 5 and 6 of section 5329 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, are amended to read as follows :

5. **Assistance.** Maintain a close liaison with the Environmental Improvement Commission, the Maine Industrial Building Authority, the Maine Recreation Authority and the Department of Economic Development and to provide assistance to municipalities to facilitate the planning and financing of industrial and recreational projects ;

6. **Recommendations.** Make recommendations and reports in cooperation with the Environmental Improvement Commission, the Maine Industrial Building Authority, the Maine Recreation Authority and the Department of Economic Development to the board on the merits of any proposed project and on meritorious locations ; and

Sec. 9. R. S., T. 30, § 5331, sub-§ 1, amended. The first 2 sentences of subsection 1 of section 5331 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, are amended to read as follows :

Upon receipt of the certificate of approval from the board as provided in section 5328, the municipal officers of any municipality are authorized to provide by resolution, at one time or from time to time, for the issuance of revenue obligation securities of the municipality for the purpose of paying the cost of acquiring, constructing, reconstructing, renewing or replacing any revenue-producing industrial-commercial, pollution-control or recreational facility, or any combination of such facilities, provided no revenue obligation securities of a municipality shall be issued until the general purpose or purposes for which the securities are to be issued and the maximum principal amount of such securities to be authorized have been approved by ballot by a majority of the votes cast on the question and the number of votes cast is at least 20% of the total vote for all candidates for Governor cast in the municipality at the last gubernatorial election.

The ballot submitted to the voters of a municipality to authorize the issuance of revenue obligation securities shall state the general purpose or purposes for which the proposed securities are to be issued and the maximum principal amount of the proposed securities authorized to be issued.

Sec. 10. R. S., T. 30, § 5332, amended. The 2nd sentence of section 5332 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended to read as follows:

Such trust agreement or the resolution providing for the issuance of such securities may pledge or assign the revenues of the ~~industrial or recreational~~ project, and may contain such provisions for protecting and enforcing the rights and remedies of the security holders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the municipal officers in relation to the acquisition of property and the construction, reconstruction, renewal, replacement and insurance of the project in connection with which such securities shall have been authorized, the rents to be charged, and the custody, safeguarding and application of all moneys.

Sec. 11. R. S., T. 30, § 5333, repealed and replaced. Section 5333 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 5333. Rentals, licenses

Before the issuance of revenue obligation securities for paying the cost of any project:

1. **Rentals.** Provision shall be made by leases or contracts which in the judgment of the board will be adequate to assure that the municipality will at all times have revenues sufficient:

A. Principal and interest. To pay the principal of and the interest on such securities as the same shall become due and payable and to create and maintain reserves for such purposes; and

B. Cost of project. To pay the cost of maintaining, repairing and operating the project unless provision shall be made in such lease or contract for such maintenance, repair and operation; and

2. **Licenses.** All licenses, if any, required for the project from the Environmental Improvement Commission shall have been obtained or shall, in the judgment of the board, be obtainable upon such issuance.

Sec. 12. R. S., T. 30, § 5336, amended. Section 5336 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended to read as follows:

§ 6336. Remedies

Any holder of revenue obligation securities issued under this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights given may be restricted by the resolution authorizing the issuance of such securities or such trust agreement, may, either by action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted ~~hereunder~~ **under this chapter** or under such resolution or trust agreement, including the appointment of a receiver, and may enforce and compel the performance of all duties

required by this chapter or by such resolution or trust agreement to be performed by the municipality, the municipal officers or by any officer thereof, including the collecting of rates, fees and charges for the use of the ~~industrial or recreational~~ project, and any such suit, action or proceeding shall be brought for the benefit of all the holders of such securities and coupons.

Sec. 13. R. S., T. 30, § 5337, amended. The first 2 sentences of section 5337 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, are amended to read as follows:

The municipal officers are authorized to provide by resolution for the issuance of revenue refunding securities of the municipality for the purpose of refunding any revenue securities then outstanding which shall have been issued under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such securities, and, if deemed advisable by the municipal officers, for the additional purpose of constructing improvements, extensions, enlargements or additions of the revenue-producing ~~industrial or recreational~~ project in connection with which the securities to be refunded shall have been issued. The municipal officers are authorized to provide by resolution for the issuance of revenue obligation securities of the municipality for the combined purpose of refunding any revenue securities or revenue refunding securities then outstanding which shall have been issued under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such securities, and paying all or any part of the cost of acquiring or constructing any additional revenue-producing ~~industrial or recreational~~ project or part thereof, or any improvements, extensions, enlargements or additions of any revenue-producing ~~industrial or recreational~~ project.

Sec. 14. R. S., T. 30, § 5341, amended. Section 5341 of Title 30 of the Revised Statutes, as enacted by section 1 of chapter 423 of the public laws of 1965, is amended to read as follows:

§ 5341. Purpose

It is declared that there is a state-wide need for industrial-commercial, pollution-control, ~~and~~ recreational and combined projects to provide enlarged opportunities for gainful employment by the people and to provide a more healthy environment and thus to insure the preservation and betterment of the economy of the State and the living standards and health of its inhabitants.

Sec. 15. Validation. Any action taken by the Municipal Securities Approval Board or any municipality before the effective date of this Act shall be as valid as if this Act were in full force and effect on the date of such action.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is: First, to enlarge the scope of the Act to include pollution-control projects and projects for any combination of industrial-commercial, pollution-control and recreational purposes; and second, to require only a finding of reasonable expectation of Environmental Improvement Commission approval at the certificate of approval stage and a more strict finding when final documents are approved.