

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1759

H. P. 1267

House of Representatives, April 3, 1973

Speaker laid before the House and on motion of Mr. Birt of East Millinocket, referred to the Committee on Natural Resources. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Create the Maine Coastal Development Corporation as a Body Corporate and Politic.

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

Sec. 1. R. S., T. 10, Part 11, additional. Title 10 of the Revised Statutes is amended by adding a new Part 11 to read as follows:

PART 11

MAINE COASTAL DEVELOPMENT

CHAPTER 905

MAINE COASTAL DEVELOPMENT CORPORATION

SUBCHAPTER I

GENERAL PROVISIONS

§ 9101. Title

This chapter shall be known and may be cited as the "Maine Coastal Development Corporation Act."

§ 9102. Purpose

The proper development of port activity requires a maximum degree of public involvement to insure adequate planning, minimum duplication of facilities and maximum protection to the natural environment of the coastal zone defined in Title 38, section 482 and has been considered an appropriate public use since 1929, and the hazards of oil transshipment have been considered an unique danger to the Maine environment at least since 1970. To

provide transshipment facilities for authorized heavy industrial facilities and to minimize environmental dangers attendant upon the handling and shipping of liquid petroleum or certain petroleum related products, a public corporation shall have the sole and exclusive right to construct, operate and maintain or otherwise control any oil terminal facility or oil refinery, or both, that might hereafter be constructed in any designated site, following approved designation procedures, in the Maine Coastal Zone and to construct, operate and maintain or otherwise control other port facilities deemed necessary for transshipment of materials from ocean carriers to the manufacturer or user. It is declared that there is a need to provide a body corporate and politic to fulfill these purposes.

§ 9103. Definitions

As used in this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning.

1. Chemical facility. "Chemical facility" means any facility used for producing basic organic or inorganic chemicals, plastic materials, synthetic resins, synthetic rubber or synthetic rubber products, synthetic fibers or petrochemicals in volumes the annual average of which exceeds 200 tons per day.

2. Heavy industrial facility. "Heavy industrial facility" means any oil terminal or oil refining facility, pulp or paper mill, primary metal producing facility or chemical processing facility.

3. Oil refining facility. "Oil refining facility" means any facility used for the refining of crude petroleum or other unfinished oils into petroleum products.

4. Oil terminal facility. "Oil terminal facility" means any facility for use in the ship to shore or shore to ship transfer of petroleum or liquid petroleum products on a volume the annual average of which exceeds 30,000 barrels per day and storage and pipeline facilities ancillary thereto.

5. Pulp mill. "Pulp mill" means any facility used for manufacturing pulp from wood or other materials such as rags, linters, waste paper or straw.

6. Paper mill. "Paper mill" means any facility used for manufacturing paper, paperboard, building paper or building board from wood pulp or other fibrous materials.

7. Primary metal producing facility. "Primary metal producing facility" means any facility used for smelting or refining ferrous or nonferrous metals from ore, pig or scrap.

8. Maine Coastal Zone. "Maine Coastal Zone" means the following named civil divisions and the adjoining ocean waters:

A. In York County: Eliot, Kittery, York, Wells, Kennebunk, Arundel, Kennebunkport, Biddeford, Saco and Old Orchard Beach;

B. In Cumberland County: Scarborough, Cape Elizabeth, Falmouth, Portland, South Portland, Cumberland, Yarmouth, Freeport, Brunswick and Harpswell;

C. In Sagadahoc County: Bath, West Bath, Phippsburgh, Arowsic, Georgetown and Woolwich;

D. In Lincoln County: Wiscasset, Westport, Southport, Boothbay Harbor, Boothbay, Edgecomb, Newcastle, South Bristol, Bristol, Damariscotta, Bremen, Waldoboro and Monhegan Plantation;

E. In Knox County: Friendship, Cushing, Warren, St. George, South Thomaston, Thomaston, Owl's Head, Rockland, Rockport, Camden, North Haven, Vinalhaven, Isle Au Haut and Matinicus Isle Plantation;

F. In Waldo County: Lincolnville, Northport, Belfast, Searsport, Stockton Springs, Prospect, Islesboro and Frankfort;

G. In Hancock County: Verona, Stonington, Orland, Penobscot, Castine, Brooksville, Sedgewick, Deer Isle, Swans Island, Brooklin, Blue Hill, Surry, Ellsworth, Trenton, Lamoine, Hancock, Franklin, Sullivan, T. 7, S. D., Gouldsboro, Winter Harbor, Bar Harbor, Mount Desert, Tremont, Southwest Harbor, Cranberry Isles, Long Island Plantation and Sorrento;

H. In Washington County: Steuben, Milbridge, Harrington, Addison, Beals, Jonesport, Jonesboro, Roque Bluffs, Trescott Township, Lubec, Machias, Machiasport, Whiting, Cutler, Edmunds Township, Dennysville, Pembroke, Perry, Eastport, Robbinston and Calais.

9. Terminal operators. The Maine Coastal Development Corporation when operating an oil port facility shall be a terminal operator as defined in Title 38, section 542.

SUBCHAPTER II

CREATION AND OPERATION OF THE PUBLIC CORPORATION

§ 9104. Organization of public corporation

There is created the "Maine Coastal Development Corporation," hereinafter referred to as the "public corporation," which shall be a body corporate and politic and constituted a public instrumentality of the State within the Department of Transportation and having the same rights, privileges and powers as other corporations organized under the general law in addition to the powers herein enumerated. It may adopt a common seal and establish bylaws, rules and regulations for the management of its affairs not repugnant to the laws of this State. Its principal place of business shall be in Augusta and it may maintain other offices at such places within the State as it may designate.

§ 9105. Powers

The public corporation is authorized and empowered as follows:

1. Powers. The public corporation may acquire, construct and operate port terminal facilities, including oil terminal facilities and oil refineries

within the coastal zone of the State of Maine and provide access to ocean transportation for heavy industrial facilities not permitted to locate within the coastal zone. It shall have the power of buying, leasing and otherwise acquiring, holding, owning, controlling, constructing, 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 of this Act. It shall have the power of constructing or securing the construction or utilization of piers and in connection therewith, railroad connections, pipelines, storage yards and sites for warehouses and industrial establishments and may lay out and build thereon such piers, with buildings and appurtenances, docks, railroad connection, pipelines, storage yards, elevators and every kind of railroad and marine terminal facility, as, in the opinion of its directors, may be desirable. 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. It shall 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 the manner 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 and Council. The net income of the public corporation may be used at the discretion of its directors. It may grade and surface, and otherwise prepare by digging or filling, any suitable railroad locations or ways which are or may be located on lands, flats or rights therein acquired by it under this Act, and may carry said ways or railroads across any railroad or railway location, pipelines or public way at, above or below grade, with the approval of the Department of Transportation. All facilities held or controlled by it shall be accessible and open to all teaming and lightering 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 contact or agreement with any other railroad company, may be provided by it with a track connection with the tracks serving its facilities.

2. Contracts and rates. The public corporation by contract or otherwise may establish rates with carriers or any other users connecting with or using its facilities, and may make contracts with any public utility for the use by the public corporation of any facility of such public utility for the transportation of property or for joint use, or for use by such public utility for the furtherance of the purposes of this act of any facilities owned by it or for the joint use thereof. The public corporation may make such contracts and agreements with any potential user of its facilities or any potential leaseholder, operator, contractor or business associates as its directors deem necessary and wise for the furtherance of these purposes and the economical performance of its duties.

3. Complaints. The public corporation may file complaints against any public utility. It shall have the right, in accordance with the procedure prescribed in Title 35 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 it in the transportation of property delivered or destined for delivery at or routed over the property of the public corporation representing in such complaint that said public utilities have failed to agree upon joint use of the facilities described in Title 35, section 256 belonging to them or either of them, and by such complaint to invoke the jurisdiction conferred in such cases by said section 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.

4. Bonds. The public corporation is authorized to provide by resolution from time to time for the issuance of bonds for the purpose of funding construction of proposed facilities and improvement of existing or acquired facilities. The public corporation bonds shall not be deemed a pledge of the faith and credit of the State and shall not constitute a debt of the State or of any agency or political subdivision thereof but shall be payable solely from revenue accruing to the public corporation; and all such bonds shall contain a statement on their face that the State of Maine shall not be obligated to pay the same or the interest thereon. Bonds issued pursuant to this Act shall be made 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, nevertheless, be valid and sufficient for all purposes as if such director had remained a director until such delivery.

The public corporation may by resolution authorizing prospective issues provide:

- A. The manner of executing the bonds and coupons;
- B. The form and denomination thereof;
- C. Maturity dates;
- D. Interest rates thereon;
- E. For redemption prior to maturity and the premium payable therefor;
- F. The place or places for the payment of interest and principal;
- G. For registration if it deems such to be desirable;
- H. For the pledge of all or any of the revenue for securing payment;
- I. For the replacement of lost, destroyed or mutilated bonds;
- J. The setting aside of reserve and sinking funds and the regulation and disposition thereof;
- K. For limitation on the issuance of additional bonds;

- L. For the procedure, if any, by which the contract with the bond holder may be abrogated or amended;
- M. For the manner of sale and purchase thereof;
- N. For covenants against pledging of any of the revenue of the public corporation;
- O. 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;
- P. For such other covenants as to rates and charges as the directors shall determine;
- Q. For covenants as to the rights, liability, powers and duties arising upon the breach by the public corporation of any covenant, condition or obligation;
- R. 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;
- S. 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;
- T. For the issuance of such bonds in series thereof;
- U. 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;
- V. To issue bonds on terms and conditions as to effectuate the purpose of the Act.

All moneys received from any bonds issued shall be applied solely to constructing its proposed facilities or improving existing or acquired facilities and there shall be and there is hereby created a lien upon such moneys until so applied in favor of the bond holders 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 public corporation and a corporate trustee located either within or outside the State of Maine. Such a trust indenture may pledge or assign but shall not convey or mortgage any facilities of the public corporation 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 bank or trust company incorporated under the laws 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 public corporation.

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 public corporation bonds shall at all times be free from taxation by the State of Maine.

The public corporation 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 in this chapter as relates to revenue bonds.

In the event of default on the bonds and 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.

5. Sue and be sued. The public corporation is authorized to sue and be sued in its own name, plead and be impleaded. Service of process in any action shall be made in the manner provided for domestic private corporations.

6. Do all things. The public corporation is authorized to do all acts and things necessary or convenient to carry out the powers expressly granted in this Act.

7. Accept funds and grants. The public corporation is authorized to accept funds and grants from the United States Government, any state agency, private corporations and public at large and to enter into agreements respecting the acceptance.

8. Contract. The public corporation is authorized to contract with the United States or any agency of the United States, the State or any of its agencies or civil divisions, private and public corporations, partnerships, associations and individuals.

9. Entry. Authorized agents and employees of the public corporation may enter upon lands, waters and premises in this State for the purpose of making surveys, soundings, drillings and tests as it deems necessary or convenient for the purpose of this Act and such entry shall not be deemed a trespass.

§ 9106. Directors; manager; powers

1. Appointment, officers, vacancy. The public corporation shall consist of 9 directors. The Commissioner of Transportation shall be the chairman of

the board of directors. The other 8 directors shall be appointed by the Governor, with the advice and consent of the Council, each to serve for 4 years, except that for the first term, one shall be appointed for one year, one for 2 years and one for 3 years. The directors shall elect an executive director and a treasurer who shall be different persons 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, with the advice and consent of the Council.

The Governor shall select his nominations for directors with a careful regard for an appropriate balance between citizens with business and environmental interests; 2 of the directors shall be from the Portland-South Portland area in which an oil facility is allowable, one of whom shall be a representative of the local fishing interests and the other of the port interests of the site in question.

2. Meetings of directors; compensation. All the powers of the public corporation 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 \$100 for each day in attendance at an official meeting, except the chairman of the board shall serve without pay and the executive director shall be reimbursed for necessary expenses incurred in the discharge of his duties as such executive director. The board of directors shall determine and fix the salary of all other officers and employees.

3. Actions at law. Actions at law in the courts of this State or before the Public Utilities Commission or Industrial Accident Commission may be brought by or against the public corporation 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.

4. Executive director. An executive director shall perform the duties of chief executive officer. He shall work on a full-time basis at this job and shall not receive any salary, gift, position or emolument from any other source for personal services rendered while he holds the title of executive director. He shall be paid out of the public corporation moneys a salary set by the board of directors commensurate with the skills and responsibilities required.

5. Vote. The public corporation may, by vote of its directors:

A. Make any contract not otherwise authorized relating to the purposes, duties, rights, powers and privileges enumerated in this Act.

B. Convey, sell, lease, demise or rent any of its property; hire, lease and rent from others any property deemed desirable for its purposes not otherwise authorized in this Act;

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

D. 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;

E. Borrow money, issue, sell and dispose of the debentures, notes or bonds.

§ 9107. Property is state property

All real and personal property at any time owned in the name of the public corporation shall be considered as the property of the State of Maine and entitled to the privileges and exemptions of property of the State, except insofar as waived by the duly authorized contract, encumbrance or other written instrument of the public corporation or by this Act.

In lieu of local, municipal and quasi-municipal taxes, charges and assessments, the authority shall pay to the applicable local governmental entities a sum as will reasonably compensate said governmental entity for services rendered to, required by, or necessitated by activities within the authority and as a result of the acquisition of property by the authority. In the event that no agreement can be reached as to the amount of said sum, the parties shall submit the impasse to the State Board of Arbitration whose decision shall be binding and final.

§ 9108. Development

1. Development. The public corporation in cooperation with the state agencies charged with responsibilities for coastal and harbor development may for the purposes of carrying out and making effective the terms of this Act, arrange to have charge of necessary land and flats now or hereafter owned by the State. The public corporation shall employ such engineers, clerks, attorneys, agents, assistants and other employees as it may deem necessary to carry out the purposes of this Act and shall determine their duties and compensation.

2. Maps, plans, etc. The public corporation shall keep and maintain 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 state official.

3. Potential users. A potential user of the public corporation's services, i. e., an applicant who wishes to construct an oil terminal facility or oil refinery, or both, within the Maine Coastal Zone in the designated Portland-South Portland area, must present for the approval of the public corporation an application including a port development plan. Upon the approval of $\frac{2}{3}$ of the directors of the public corporation, said applicant shall be permitted to present its application for "site selection" approval to the Board of Environmental Protection under Title 38, section 484. Upon approval of the Board of Environmental Protection under Title 38, section 484, the public corporation may render assistance to the applicant in the accomplishment of the approved plan.

The port development plan shall contain as a minimum:

- A. Estimated size and location of any proposed acquisition and evidence of the ability of the user to acquire the location or locations necessary;
- B. Estimated cost of acquisition and facility construction;
- C. Proposed facilities needed to accommodate traffic related to actual applicants and projected possible future users;
- D. A statement of projected sources of funds required to construct the proposed facility;
- E. A section commenting upon the economic impact of said port facility development and the economic impact of the related developments for which application has or may soon thereafter be made under Title 38, section 484, such economic impact section to consider, as a minimum:

- (1) Jobs, both temporary and permanent;
- (2) State and local tax effects;
- (3) Economic multiplier effects;
- (4) Satellite industry potential;
- (5) Estimates of availability and prices of products to be produced by applicants;
- (6) Quantifiable costs relating to pollution control, unavoidable pollution, required public services, competition with existing Maine industry;
- (7) Recommendations as to ways the State may maximize benefits and minimize costs;
- (8) Evidence of the ability of the potential user to carry out its intentions.

F. A draft heavy industry port development plan shall be circulated to any municipal, county, appropriate planning commission and state department or agency which has a direct official interest in the proposed facility, its uses or regulation. The public corporation shall allow a minimum of 30 days for comment. On receipt of comments or passage of 30 days, the public corporation shall cause the heavy industry port development plan to be drafted in final form and published and made available for inspection at its office or for sale or free distribution at large at the discretion of the directors. The plan shall be updated periodically.

§ 9109. Violations of Act

The Supreme Judicial Court shall have jurisdiction upon information filed by the Attorney General over violation of this Act.

§ 9110. Eminent domain

In order to acquire property by right of eminent domain, the public corporation shall, after voting by $\frac{2}{3}$ vote 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 acquired 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 chairman of the board. Notice of such proceedings shall be given to the owners thereof, if known, by certified mail and notice shall be published once a week for 3 successive weeks in a newspaper published or distributed in the county where the said lands or easements are situated. The recording shall operate as a taking and vest title of the real estate and of the rights and easements therein described in the public corporation at the time of recording. No taking shall be valid unless it is recorded in accordance with the provisions of this section. When, for any reason, the public corporation 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 public corporation 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. The public corporation 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 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 or the owner, operator, possessor or other person controlling, managing or operating such existing public use; provided 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 Department of Transportation, 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 public corporation for the purposes of this Act, and that the taking by said authority is in the public interest.

Any person, firm or corporation, from whom land has been acquired and who cannot agree with the directors as to the assessment of damages, 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.

The public corporation shall not begin any condemnation proceedings related to an oil terminal facility or any other facility until it shall have published a heavy industry port development plan and until it shall have been notified that the proposed facility has been approved pursuant to Title 38, section 484.

The public corporation may condemn land and construct facilities thereon only after application to the public corporation for the use of its proposed facilities by an applicant whose proposed development has been approved under Title 38, section 484, and only as a necessary adjunct to the completion of the project. The public corporation may then operate or lease said facilities for a fee or other compensation or fees that its directors shall set and under appropriate conditions to any appropriate user provided that it shall at no time condemn land nor construct facilities in the coastal zone which land or facilities are in any way designed to attract new heavy industrial developments for which no developer has applied for site approval under Title 38, or are larger than required to accommodate the reasonably foreseeable needs of the applicant or applicants known to it at the time it takes action.

§ 9111. Governmental function

The purposes of this Act are public and the public corporation shall be regarded as performing a governmental function in the carrying out of this Act.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Maine Coastal Development Corporation for the fiscal years ending June 30, 1974 and June 30, 1975 the sum of \$106,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74	1974-75
MAINE COASTAL DEVELOPMENT CORPORATION		
Personal Services	\$12,000	\$24,000
All Other	10,000	50,000
Capital Expenditures	3,000	7,000
	<hr/>	<hr/>
	\$25,000	\$81,000

STATEMENT OF FACT

This legislation, following the recommendation of the Governor's Task Force on Energy, Heavy Industry and the Maine Coast, creates the Maine Coastal Development Corporation within the Department of Transportation for the purpose of owning and regulating any oil terminal facilities or oil refining facilities that may be created within designated areas where such facilities would be permitted in the Maine Coastal Zone.