

MAINE STATE LEGISLATURE

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(New Draft of S. P. 801, L. D. 2295)
FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2564

S. P. 931

In Senate, March 7, 1974

Reported by Senator Greeley from the Committee on Transportation and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to the Powers of Maine Port Authority.

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

Sec. 1. R. S., T. 23, § 4205, sub-§ 4, repealed. Subsection 4 of section 4205 of Title 23 of the Revised Statutes, as enacted by section 16 of chapter 593 of the public laws of 1971, is repealed as follows:

‡. ~~The Maine Port Authority,~~

Sec. 2. P. & S. L., 1929, c. 114, § 1, sub-§ (b), amended. The first sentence of subsection (b) of section 1 of chapter 114 of the private and special laws of 1929, as amended by section 1 of chapter 196 of the private and special laws of 1969 and by section 25 of chapter 593 of the private and special laws of 1971, is further amended to read as follows:

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 piers and terminal facilities facility** within the State of Maine with all the rights, privileges and power necessary therefor. ~~and~~ It shall have the power of buying, leasing and otherwise acquiring, ~~and of~~ 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 ~~above~~ purposes ~~set forth herein constructing or securing the constructing or utilizing of piers and in connection therewith.~~ It may construct pipelines, highways, waterways, railroad ~~facilities connections,~~ storage yards and sites for warehouses and industrial establishments, and may lay out and build ~~thereon such wharves~~

and piers, with buildings and appurtenances, docks, ~~highways, waterways, railroad connections, storage yards~~ 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. ~~for a term not exceeding 5 years, it~~ It may lease, demise or rent any of its real or personal property. ~~not required in the performance of its functions; and for a period not exceeding 5 years, and in a sum not exceeding \$50,000 by vote of its directors, it~~ 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~~ 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~~ It may acquire, hold and operate lighters and other vessels necessary or convenient. ~~it~~ It may establish and collect the fees, rates, rentals and other compensation for the use of its property and facilities. ~~it~~ 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 and Council. ~~the~~ The net income of the Port Authority may be used for ~~improvements and extensions of the property of the Port Authority in the discretion of its directors~~ any authorized purposes. Acquisition, construction, maintenance and operation of oil off-loading facilities shall be limited to sites in Portland Harbor.

Sec. 3. P. & S. L., 1929, c. 114, § 1, sub-§ (d), sub-¶ (5), amended. Subparagraph (5) of subsection (d) of section 1 of chapter 114 of the private and special laws of 1929, as amended by chapter 5 of the private and special laws of 1941, is further amended to read as follows:

5. Borrow money, issue, sell and dispose of its debentures, notes or bonds, unsecured or secured ~~by mortgage of its property or~~ 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.

Sec. 4. P. & S. L., 1929, c. 114, § 1, sub-§§ (h) and (i), additional.—Section 1 of chapter 114 of the private and special laws of 1929, as amended, is further amended by adding 2 new subsections (h) and (i) to read as follows:

(h) **Agreements.** The Port Authority and the Department of Transportation may enter into such agreements as the directors and commissioner 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 ad-

jacent 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 of indenture.

Sec. 5. P. & S. L., 1929, c. 114, § 2, amended. The 4th sentence of section 2 of chapter 114 of the private and special laws of 1929, at last repealed and replaced by section 29 of chapter 593 of the private and special laws of 1971, is amended to read as follows:

The other director shall be the Commissioner of Transportation who shall serve as chairman of the board of directors and president.

Sec. 6. P. & S. L., 1929, c. 114, § 3, repealed and replaced. Section 3 of chapter 114 of the private and special laws of 1929, as amended by section 30 of chapter 593 of the private and special laws of 1971, is repealed and the following enacted in place thereof:

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, with the advice and consent of the Executive Council, 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. 7. P. & S. L., 1929, c. 114, § 4, sub-§ (a), repealed and replaced. Subsection (a) of section 4 of chapter 114 of the private and special laws of 1929, as amended, is repealed and the following enacted in place thereof:

(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 or contiguous to 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.

Sec. 8. P. & S. L., 1929, c. 114, §§ 12 and 13, additional. Chapter 114 of the private and special laws of 1929, as amended, is further amended by adding 2 new sections 12 and 13, to read as follows:

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.

Sec. 9. Appropriation. There is appropriated to the Maine Port Authority the sum of \$5,000 from the General Fund for the fiscal year ending June 30, 1975, to carry out the purposes of this Act. The appropriation shall not lapse, but shall remain a continuing carrying account.

STATEMENT OF FACT

The purpose of this Act is to make such revisions to the Maine Port Authority enabling legislation as are necessary to implement the planned development of the Portland waterfront. Further, it is to provide an improved base for revenue bond financing of port developments and assure close liaison and team work between the Department of Transportation and the Maine Port Authority in such developments.