

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1449

H. P. 1155

House of Representatives, March 25, 1975

Referred to the Committee on Energy. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Post of Owls Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Preserve the Passamaquoddy-Cobscook Bay Tidal Potential for
Generating Power by Moratorium on Incompatible Developments.

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

10 MRSA c. 1203 is enacted to read:

CHAPTER 1203

MORATORIUM ON DEVELOPMENTS INCOMPATIBLE
WITH TIDAL POWER GENERATION

§ 11101. Title

This Act shall be known and may be cited as the "Maine Tidal Power Protection Act."

§ 11102. Tidal power policy and purpose

The Legislature reaffirms its findings and restates its declarations set forth in Title 5, section 5002, as enacted by the public laws of 1973, chapter 770, regarding the energy shortage in this State and the unique opportunity in this State to develop new energy sources through the use of renewable natural resources such as the waters and tides of the sea.

The Legislature finds that the energy crisis for the State of Maine has been further deepened by increases in the price of oil, and by the unreliability of the supply of oil and related products.

The Legislature further finds that the Passamaquoddy Tidal Power Project, as recommended by the Secretary of the Interior in 1964, is not only

technically feasible but, because of the related benefits of the tidal project and the rapidly increasing costs and unreliability of fossil fuel sources of power, is becoming more economically and socially desirable than ever before.

The Legislature further finds that the Passamaquoddy Tidal Power Project offers the extraordinary promise of providing a nonpolluting source of electrical energy from the tidal regime of the Passamaquoddy-Cobscook Bay area, a totally reliable and renewable natural resource, a greatly expanded and intensively managed fishery for the area through the application of aquaculture techniques and a new and large tourism industry for that area.

The Legislature further declares that it is in the public interest, for the public benefit and for the good order of the people of this State to provide opportunity for a meaningful and intensive investigation of the economic, social and environmental desirability and feasibility of the Passamaquoddy Tidal Power Project and related aquaculture and tourism industries from the perspective of the various sciences and disciplines involved.

§ 11103. Incompatible development policy

The Legislature further finds that the viability of the Passamaquoddy Tidal Power Project is directly jeopardized by a proposal presently pending before state agencies for an oil refinery-marine supertanker terminal complex to be located in Cobscook Bay, the operation of which would be incompatible with the construction and operation of the Passamaquoddy Tidal Power Project.

The Legislature further finds that a moratorium on the issuance of permits and the beginning of construction for the oil refinery-marine terminal complex would not substantially jeopardize the interest of the owner of that development because under federal law construction of such development could not begin within 18 months at the very earliest, probably not before March 20, 1979, and possibly never.

The Legislature further finds that the granting of any permits or approval by any state agency for the oil refinery-marine terminal complex could prejudice the ability of the State to consider the area for the alternative use of tidal power.

Therefore, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State, including the carrying out of the public policies and purposes of the public laws of 1973, chapter 770, that no permits or approvals be granted and no other action be taken with regard to the oil refinery-marine terminal complex proposal or any similar developmental proposal for the area that would be incompatible with the construction or operation of the Passamaquoddy Tidal Power Project.

§ 11104. Moratorium on incompatible developments

1. Moratorium on state action. No state agency shall grant any permit or approval, nor entertain any application for any permit or approval, of any oil refinery-marine terminal complex proposal or any similar developmental proposal for the Passamaquoddy-Cobscook Bay area that would be incompatible in its construction or operation with the construction or operation of

the Passamaquoddy Tidal Power Project as recommended by the Secretary of the Interior in 1964.

2. **Moratorium on private action.** No applicant for, or holder of, any permit or approval for a project or development described in subsection 1 shall take any further action to secure any permit or approval from any governmental agency for such project or development or to commence construction of such project or development.

3. **Suspension of effective date of any permit granted.** If any state agency has granted any permit or approval for a project or development of the type described in subsection 1, the effective date of such permit is hereby suspended.

4. **Limitation on moratorium and suspension.** The moratorium of actions in subsections 1 and 2 and the suspension in subsection 3 shall expire on January 31, 1977.

STATEMENT OF FACT

The Office of Energy Resources, in the course of carrying out its statutory duties, has determined that the Passamaquoddy Tidal Power Project presents a highly desirable energy source for the State. The project would provide 1,000 megawatts of peaking power from an entirely reliable and nonpolluting source—the tides. The project is not only technologically feasible, it is also of growing economic attractiveness in the light of the increasing costs and unreliability of supply of imported oil and the opportunities the project creates for (1) greatly expanded fisheries in the area through the use of aquaculture techniques and (2) a substantial tourism industry. The Department of Marine Resources has initiated an economic and biological investigation of the potential the tidal project would provide for intensive aquaculture in the area and a similar tidal project in France has resulted in a substantial tourism industry.

The tidal power project in operation would substantially reduce the State's dependence on imported oil, saving the State approximately 1,800,000 barrels of oil annually.

Unlike fresh water hydroelectric dam projects, which would have the substantial adverse environmental impact of inundating land that may be valuable for timber production, wildlife habitat and for other purposes, the tidal power project would have no such adverse impact.

A proposal presently pending before the State's Board of Environmental Protection, however, for an oil refinery-supertanker marine terminal complex on Moose Island presents a serious threat to the viability of the Passamaquoddy Tidal Project. In particular, the supertankers and product tankers would have to navigate head harbor passage directly through the area where one of the Passamaquoddy Tidal Project dams would be constructed.

The proposed moratorium would not, however, substantially delay the oil refinery-marine terminal development if, at its termination, it was determined not to go forward with the Passamaquoddy Tidal Project. Because of federal law, particularly the National Environmental Policy Act of 1969, 42 USC § 4321 *et seq*, construction of the oil refinery-marine terminal complex could not begin in any event substantially before the moratorium would expire by its terms on January 31, 1977.

The termination date of the moratorium has been chosen to provide the relevant state agencies and the Legislature sufficient time to evaluate the tidal project more fully without, at the same time, unduly prejudicing the interests of the applicant for the oil refinery-marine terminal complex permit or the interests of any potential applicant for a similar project in that area.