

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 SECOND REGULAR SESSION  
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4 ONE HUNDRED AND TENTH LEGISLATURE  
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6 **Legislative Document**

**No. 1800**

7  
8 H. P. 1815 House of Representatives, January 12, 1982  
9 Approved for introduction by the Legislative Council pursuant to  
Joint Rule 26.  
Referred to the Committee on Public Utilities and ordered printed.  
EDWIN H. PERT, Clerk  
10 Presented by Representative Kelleher of Bangor.  
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13 STATE OF MAINE  
14

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15 IN THE YEAR OF OUR LORD  
16 NINETEEN HUNDRED AND EIGHTY-TWO  
17

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18 AN ACT to Amend the Law Enabling the  
19 Supply of Water to the City of Bangor.  
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21 **Emergency preamble.** Whereas, Acts of the Legislature  
22 do not become effective until 90 days after adjournment  
23 unless enacted as emergencies; and

24 Whereas, it is in the interest of the citizens of the  
25 State of Maine to foster the development of hydroelectric  
26 power wherever feasible; and

27 Whereas, the City of Bangor is the owner of a dam on  
28 the Penobscot River which was heretofore used to generate  
29 hydroelectric power; and

30 Whereas, said dam is in a state of disrepair preventing  
31 its continued utilization for the generation of hydroelec-  
32 tric power; and

1       Whereas, the city has entered into a lease agreement  
2 providing for the redevelopment of said dam; and

3       Whereas, prior to the final determination of the feasi-  
4 bility of the redevelopment of the dam, extensive studies  
5 will be required, among which is a study of the impact such  
6 redevelopment would have on fisheries in the river; and

7       Whereas, it is necessary to commence such studies in  
8 the early spring prior to the fish migration; and

9       Whereas, it would be detrimental to the interest of the  
10 public to delay the commencement of such studies; and

11       Whereas, prior to the commencement of such studies, it  
12 is necessary to clarify the authority of the City of Bangor  
13 under the enabling acts under which the city has maintained  
14 the dam; and

15       Whereas, in the judgment of the Legislature, these  
16 facts create an emergency within the meaning of the Consti-  
17 tution of Maine and require the following legislation as  
18 immediately necessary for the preservation of the public  
19 peace, health and safety; now, therefore,

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

21       Sec. 1 P&SL 1875, c. 168, §1, as amended by P&SL 1901,  
22 c. 380, §1, is further amended to read:

23       Sec. 1. The City of Bangor is hereby authorized to  
24 take, hold and convey into, about and through the City of  
25 Bangor, from any point that may be deemed expedient between  
26 the foot of Treat's falls in Bangor and the head of  
27 McMahon's falls in Veazie, water sufficient for the use of  
28 said city and the inhabitants thereof, for the extinguish-  
29 ment of fires, domestic uses and, creating steam, and for  
30 the generation of hydroelectric power, and may flow, take  
31 and hold, by purchase or otherwise, any lands or real estate  
32 for laying and maintaining aqueducts and pipes, for taking,  
33 discharging, disposing of and distributing water, and for  
34 constructing and maintaining reservoirs, dams and such other  
35 works as may be deemed necessary or proper for raising,  
36 forcing, retaining, distributing, discharging or disposing  
37 of said water and for the generation of hydroelectric power  
38 and for the erection of any works for said purposes, and for  
39 sinking wells and for making excavations for the filtration  
40 of water. Said city shall file in the registry of deeds in

1 the County of Penobscot plans of the location of all land  
2 and water rights taken under the provisions of this Act; and  
3 no entry shall be made upon any land except to make surveys  
4 until the expiration of ~~ten~~ 10 days from said filing; and  
5 with such plan the said city may file a statement of the  
6 damages that it is willing to pay to any person for any  
7 property so taken, and if the amount finally awarded does  
8 not exceed that sum the city shall recover costs against  
9 such person, otherwise such person shall recover costs  
10 against the city.

11       Sec. 2. P&SL 1875, c. 168, §2, as amended by P&SL  
12 1880, c. 210 is further amended to read:

13       Sec. 2. Said city may erect and forever maintain, at  
14 any point, a dam across said river, for the retention of  
15 water for said specified purposes and for the generation of  
16 hydroelectric power, not exceeding ~~twelve~~ 8 feet in height  
17 above mean high tide referenced to National Geodetic Vertical  
18 Datum based on Portland, Maine, mean sea level equalling  
19 0.00 feet, providing that said dam shall not exceed 6 feet  
20 in height above mean high tide so referenced without first  
21 obtaining the written consent of the then owner of the  
22 upstream dam located at Veazie; and take by gift or purchase,  
23 any franchises, or the right to operate under any  
24 franchises required for said purposes, or may purchase and  
25 forever maintain any dam erected, or to be erected across  
26 said river at any point, for the retention of said water, or  
27 may purchase the privilege and right forever to draw and  
28 take from said river, at any point, a sufficient quantity of  
29 water for all said purposes, and sufficient water power to  
30 pump and raise, force and distribute the same to any required  
31 places in said city; may make, build, lay down and  
32 maintain aqueducts and pipes, from said river, at said  
33 point, to, into, through and about said city, and secure and  
34 maintain the same by any works suitable therefor; may make  
35 and establish such public fountains and hydrants in such  
36 places as may from time to time be deemed proper, and prescribe  
37 the purposes for which the same may be used, and may  
38 change or discontinue the same; may distribute water  
39 throughout the city, and for this purpose may lay down pipes  
40 to any house or building in said city, the owner, or owners  
41 thereof having notice and not objecting thereto; may regulate  
42 the use of said water within said city, and establish,  
43 receive and collect the prices or rents to be paid therefor;  
44 and the said city may, for the purpose aforesaid, carry and  
45 conduct and maintain any aqueducts, pipes or other works by  
46 them to be made, laid down or conducted, over, under,  
47 through or across any water course, or river, street,

1 bridge, railroad, highway, or other way, in such manner as  
2 not to obstruct the travel or free use thereof; may enter  
3 upon, and dig up any such road, street, or way, for the pur-  
4 pose of laying down pipes beneath the surface thereof, and  
5 for maintaining and repairing the same, and the said city  
6 may, so long as it is the owner of said dam, use the elec-  
7 tric power generated by it at said facility for its municip-  
8 al purposes or sell said electric power, or such portion  
9 thereof that is not used for its municipal purposes, to any  
10 public utility or to any other person, firm or corporation  
11 to be used or resold for public utility purposes, and, in  
12 general, may do any other acts and things necessary, or con-  
13 venient, and proper for carrying out the purposes of this  
14 Act. The said city may sell and convey or lease said dam,  
15 and other properties and rights in property owned by it and  
16 used in connection therewith, or any portion thereof,  
17 including the right to flow, take and hold, by purchase or  
18 otherwise, any lands and real estate as hereinabove granted  
19 to said city, to any person, firm or corporation, and said  
20 city and such purchaser or lessee, and its or their assigns,  
21 may exercise all rights granted herein and may reconstruct,  
22 repair and forever maintain said dam for said purposes. Any  
23 such purchaser or lessee, or its or their assigns, may sell  
24 the electric power generated by said facility to said city  
25 to be used for its municipal purposes, to any public utility  
26 or to any other person, firm or corporation to be used or  
27 resold for public utility purposes. The reconstruction,  
28 repair, maintenance and operation of said dam and hydroelec-  
29 tric generating facility shall comply with all other appli-  
30 cable laws and regulations of the State. Upon application of  
31 one hundred 100 or more tax payers in the Town of Brewer, to  
32 be supplied with water, said city may lay and maintain aque-  
33 ducts or pipes over, under, and across the Penobscot River,  
34 above the Bangor toll bridge, for conducting, discharging,  
35 and distributing water in said Town of Brewer, for the use  
36 of the inhabitants thereof; and make, build, lay down, and  
37 maintain aqueducts and pipes, from said river, to, into,  
38 through and about said Town of Brewer, and secure the same  
39 by any works suitable therefor; and may do any and all other  
40 acts in said town, necessary to be done to this end which  
41 said city is authorized by this Act to do in the City of  
42 Bangor, and subject to the same liabilities therefor; said  
43 city shall construct and maintain, from time to time, in  
44 such dam, such suitable locks or sluice for the passage of  
45 boats, rafts, logs and other lumber, as the public necessity  
46 may require. This Act shall be subject to the Private and  
47 Special Laws of 1957, chapter 39, section 12, An Act to Cre-  
48 ate the Bangor Water District.

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

3   Statement of Fact

4           The purpose of this bill is to clarify the authority of  
5 the City of Bangor to maintain its dam across the Penobscot  
6 River for the purpose of generating hydroelectric power and  
7 to authorize the city to lease or convey its rights to  
8 others to maintain the dam for such purpose. This bill fur-  
9 ther reduces the height to which the dam may be maintained  
10 from the presently authorized height of 12 feet above mean  
11 high tide to 8 feet above mean high tide.

12           The city has maintained its dam across the Penobscot  
13 River pursuant to the Private and Special Laws of 1875,  
14 chapter 168, an Act for Supplying the City of Bangor with  
15 Water, as amended. Section 2 of the Act authorized the city  
16 to "erect and forever maintain, at any point, a dam across  
17 said river, for the retention of water for said specified  
18 purposes, not exceeding 12 feet in height above mean high  
19 tide . . . ."

20           The city constructed a dam in 1875 and 1876 and main-  
21 tained it for water supply purposes until the Bangor Water  
22 District was formed in 1957 and took over the water supply  
23 system from the city. The city developed a hydroelectric  
24 generating facility at the dam site and it generated elec-  
25 tricity for its purposes until the early 1970's. The Legis-  
26 lature by implication has recognized that the city was using  
27 the dam for the production of electricity. The Private and  
28 Special Laws of 1927, chapter 73, amended the Act by provid-  
29 ing that the City of Bangor water board was "authorized and  
30 empowered to take over the management and control of the  
31 electrical department of said City of Bangor, said electri-  
32 cal department having been created by ordinance of said City  
33 of Bangor . . . ." In the case of City of Bangor vs. City  
34 of Brewer, 142 Me. 6 (1946), the court reviewed the history  
35 of the city's authorization to maintain the dam and noted  
36 that the "1927 law . . . authorized the Water Board to take  
37 over an electrical department created by municipal ordinance  
38 and carries a necessary implication that it was then in full  
39 operation." Although the 1927 legislation did by implication  
40 authorize the maintenance of the dam for the purpose of  
41 generating hydroelectric power, this bill will clarify the  
42 right to maintain the dam for such purposes.