

MAINE STATE LEGISLATURE

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EIGHTY-FIRST LEGISLATURE

SENATE

NO. 147

In Senate, February 23, 1923.

Referred to Committee on Judiciary and Interior Waters and two thousand copies ordered printed. Sent down for concurrence.

L. ERNEST THORNTON, Secretary.

Presented by Senator Brewster of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-THREE

AN ACT to Continue the Maine Water Power Commission,
Created by Chapter One Hundred and Thirty-two of the
Public Laws of Nineteen Hundred and Nineteen and to In-
crease Its Duties and Powers and to Provide for the Creation
of Corporations Which May Undertake the Conservation,
Storage and Control of Waters within the State.

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

Section 1. The governor with the advice and consent of
2 the council shall appoint five citizens of the state as here-
3 inafter provided, who shall constitute a commission to be
4 known as the Maine water power commission. The terms

5 of office of the persons first appointed shall be so arranged
6 and designated at the time of their appointment that the
7 term of one member shall expire in five years, one in four
8 years, one in three years, one in two years and one in one
9 year from the first day of August, nineteen hundred and
10 twenty-three, and on the expiration of said terms and fu-
11 ture terms, appointment of a successor for a five-year term
12 shall be made. A chairman for one year shall be designated
13 by the governor, the chairman thereafter to be elected an-
14 nually by the members. Any vacancy occurring in said
15 commission shall be filled in the same manner as by original
16 appointment for the balance of the unexpired term. No
17 commissioner shall have any official or professional con-
18 nection with or hold any interest in any private water power
19 or water storage reservoir company operating within the
20 state nor shall any commissioner or employee serve on or
21 under any committee of any political party. Any wilful
22 violation of the provisions of this act by any commissioner
23 shall constitute sufficient cause for his removal by the gov-
24 ernor with advice and consent of council. The commission-
25 ers shall each receive five dollars per day while engaged
26 upon work of the commission and they shall also be paid
27 their actual and necessary expenses incurred in the perform-
28 ance of their duties.

Sect. 2. The commission may employ a competent engi-
2 neer with the title of chief engineer, who shall have charge,
3 under the direction of the commission, of the operations

4 under this act. The chief engineer is hereby authorized
5 and empowered to employ, subject to the approval of the
6 commission, such engineers, stenographers, clerks and other
7 subordinates as he may find necessary and within the limits
8 of the appropriation provided for the commission. The
9 commission shall adopt and have a seal and shall be pro-
10 vided with a suitable office at the state house in which its
11 records shall be kept.

Sect. 3. The commission shall preserve all information
2 heretofore collected and shall thoroughly investigate the
3 water power resources within the State of Maine, the dis-
4 charge of rivers and their drainage area, the location, nature
5 and size of the lakes and ponds in the state and their re-
6 spective value and capacity as storage reservoirs and such
7 other hydrographic data as they shall deem of value in de-
8 termining the best methods for the improvement and de-
9 velopment of the water power resources within the state.

Sect. 4. The commission shall investigate and report upon
2 what rights remain to the state in the storage reservoirs
3 and basins and in the developed and undeveloped water
4 powers within the state, and whether these rights are in
5 any respect being adversely affected by any person, firm
6 or corporation, and shall investigate the present water power
7 resources within the state and on the public lands and de-
8 scribe such water powers whether developed or undeveloped.
9 The commission shall investigate and report upon any and
10 all violations of section one, chapter sixty of the revised

11 statutes of Maine. The attorney general shall act as counsel
12 for the commission.

Sect. 5. The commission is hereby given full power and
2 authority to administer oaths, compel the attendance of wit-
3 nesses, the production of books and papers, to punish for
4 contempt and to do everything necessary and proper to se-
5 cure all the facts required to properly place before the people
6 of the state the true situation in regard to the water power
7 resources of the state, and shall present plans whereby the
8 water power resources of the state may be conserved, used
9 and developed for the benefit of the people of Maine.

Sect. 6. Every person, firm or corporation before com-
2 mencing the erection of a dam for the purpose of develop-
3 ing any water power in this state, or the creation or im-
4 provement of a water storage basin or reservoir for the
5 purpose of controlling the waters of any of the lakes or
6 rivers of the state, shall file with said commission for its
7 information and use copies of plans for the construction
8 of any such dam or storage basin or reservoir, and a state-
9 ment giving the location, height and nature of the proposed
10 dam and appurtenant structures and the estimated power
11 to be developed thereby; and in case a dam is to be con-
12 structed solely for the purpose of water storage and not for
13 the development of a water power at its site, plans and
14 statements shall be filed with the commission showing the
15 extent of the land to be flowed, the estimated number of
16 cubic feet of water that may be stored and the estimated

17 effect upon the flow of the streams to be affected thereby.

Sect. 7. The commission is hereby authorized and directed
2 to confer with the director or representative of the United
3 States Geological Survey and to accept its co-operation with
4 this state in the prosecution of hydrographic and geological
5 surveys and the preparation of a topographical survey and
6 map of this state, which are hereby authorized to be made.

Sect. 8. The sum of fifteen thousand dollars for the year
2 ending June thirty, nineteen hundred and twenty-four, and
3 fifteen thousand dollars for the year ending June thirty,
4 nineteen hundred and twenty-five, is hereby appropriated
5 to carry out the provisions of this act; and any portions
6 of said sums remaining unexpended on June thirty, nine-
7 teen hundred and twenty-four, shall be available for use
8 by the commission during the year nineteen hundred and
9 twenty-five subject to the approval of the governor and
10 council. The sum of five thousand dollars for the year
11 ending June thirty, nineteen hundred and twenty-four, and
12 five thousand dollars for the year ending June thirty, nine-
13 teen hundred and twenty-five, is hereby appropriated to car-
14 ry out the provisions of section seven of this act relating
15 to the topographic surveys to be made in co-operation with
16 the United States Geological Survey; and any portion of
17 said sums remaining unexpended on June thirty, nineteen
18 hundred and twenty-four, shall be available for use during
19 the year nineteen hundred and twenty-five subject to the
20 approval of the governor and council.

Sect. 9. If and when the governor shall proclaim the adoption of an amendment to the constitution of this state declaring the conservation, storage, and control of waters within the state to be paramount public uses and authorizing the legislature to provide for the same and for assessment or collection of a reasonable charge therefor, the next ten sections shall thereupon become effective and be so proclaimed by the governor.

Sect. 10. Upon the recommendation of the commission after public hearing and approval by the governor and council any plans, projects and specified construction for the conservation, storage and control of waters within the state at any specified place or locality or upon any specified water system and the assessment and collection of a reasonable charge therefor shall be undertaken, carried out and managed by the "State of Maine Water Storage Corporation" or other corporation specified by the governor and council, as hereinafter provided.

Sect. 11. The governor and council may require the commission to prepare plans and specifications in such detail as the governor and council may direct for the conservation, storage and control of waters at any particular place or locality or on any particular water system, and a majority of the users to be affected or any five users to be affected may present to the commission by petition a general plan with estimates of cost and available revenue for the conservation, storage and control of waters at any particular

10 place or locality or on any particular water system. The
11 commission shall investigate such petition and shall have
12 public hearing or hearings thereon and shall as soon as pos-
13 sible make report and recommendation thereon to the gov-
14 ernor and council.

Sect. 12. The commissioners for the time being and their
2 successors in office are constituted a corporation under the
3 name of "State of Maine Water Storage Corporation," with
4 all the rights, privileges and powers of a corporation or-
5 ganized under the general law in addition to the powers
6 herein enumerated, except in so far as inconsistent there-
7 with, with a capital of 1000 shares of common stock with-
8 out par value and which stock shall be issued to the State
9 of Maine and with the right to adopt a common seal and
10 to establish by-laws and regulations for the management of
11 its affairs not repugnant to its charter and the laws of this
12 state, and with a principal place of business at the office at
13 Augusta of the Maine Water Power Commission.

(a) The said corporation is constituted an agency of
2 the State of Maine for the general purpose of conserving,
3 storing and controlling waters within the State of Maine
4 and assessing and collecting reasonable charges in relation
5 thereto and for carrying into effect the purposes of this act,
6 as the same now are or may hereafter be made by amend-
7 ment, with all the rights, privileges and powers necessary
8 therefor and shall have the power of buying, leasing, and
9 otherwise acquiring and of holding, owning, controlling,

10 constructing, leasing, mortgaging, operating, and otherwise
11 using and of selling and otherwise disposing of real and
12 personal property and of all rights and easements therein,
13 including flowing rights, as its directors may from time to
14 time consider necessary for the purpose of conserving, stor-
15 ing, and controlling water within the state and may in con-
16 nection therewith build and construct dams, reservoirs, ba-
17 sins and other works for the conservation and storage of
18 water. It shall keep account of its income and expenditures
19 and liabilities in manner approved by the state auditor, who
20 shall audit its books of account at least once a year, and
21 it shall make report of the condition of its property and
22 finances to the Maine Water Power Commission at such
23 times as said commission may designate.

(b) The officers of the corporation shall consist of a
2 board of directors, who shall be the members of the Maine
3 Water Power Commission for the time being and two own-
4 ers or users, or officers or directors of corporate owners or
5 users, of water power on the water system or systems af-
6 fected by the approved project, to be elected by the incor-
7 porators, a president who shall be elected by the directors
8 from among their own number and a treasurer, secretary
9 and such other officers as the board of directors may from
10 time to time deem necessary or advisable and who need not
11 be members of the board of directors.

(c) All the powers of the corporation may be exercised
2 by the board of directors in lawful meeting and a majority

3 of the directors shall be necessary for a quorum. Regular
4 meetings of the board of directors may be established by
5 by-law and no notice need be given to the directors of such
6 regular meeting. The directors shall receive such salary
7 as the board may determine not in excess of five hundred
8 dollars per year and shall determine and fix the salary of
9 all other officers and employees of the corporation.

(d) The corporation shall have the right by eminent
2 domain paramount to all public uses not primarily for the
3 public peace and health, to take any real estate, personal
4 property, land, water rights, privileges and easements nec-
5 essary or convenient for the carrying out of its purposes,
6 including the right of flowage, to be exercised and com-
7 pensation therefor made in the manner provided in sec-
8 tions twelve to twenty-two inclusive of chapter sixty-one
9 of the revised laws of nineteen hundred sixteen, except
10 that the corporation may give its own notes, certificates
11 of indebtedness or mortgage bonds as security if security
12 is requested under the provision of section thirteen there-
13 of, and damage for flowage may be determined as pro-
14 vided in chapter ninety-seven of the revised laws of nine-
15 teen hundred sixteen. All real and personal property at
16 any time owned in the name of the corporation shall be
17 considered as the property of the state of Maine and en-
18 titled to the privileges and exemptions of property of the
19 state, except in so far as waived by the contract, mortgage

20 or other written instrument of the corporation, or by this
21 act.

(e) The corporation is empowered to authorize and direct the selectmen of any town, the assessors of any plantation or organized township, and the selectmen of a town or assessors of a plantation or organized township adjoining any unorganized township, to take up from any existing cemetery in such town, plantation or organized township, or unorganized township respectively, which will be flowed by any of its dams, the bodies and remains of all deceased persons buried therein, and all headstones and markers at the graves therein, and remove said bodies and remains to a new cemetery to be selected by said selectmen or assessors and there decently inter the same, and properly reset such headstones and markers over such dead bodies and remains. Such new cemeteries shall be located with due regard to the convenience of all the inhabitants of the respective communities in which they are located. Said selectmen and assessors are in each case, within thirty days after being so directed by the corporation, to select the place for a new cemetery and fix the bounds thereof, and to proceed with reasonable diligence to cause the removal of the bodies, remains, headstones and markers, as aforesaid. If they fail so to do the corporation is authorized and empowered to make such selection or selections and cause such removals to be made. All of the expenses incurred in procuring the lands necessary for such ceme-

26 teries, in clearing and fitting the ground and fencing the
27 same, and in the taking up and removal of all of the re-
28 mains of all deceased persons, and in the removal of said
29 headstones and markers, and the interment of said remains
30 and re-setting of said headstones and markers shall be paid
31 for by the corporation. No claim shall be made against
32 the corporation for not complying with the terms herein
33 set out unless the same is made within sixty days after
34 this corporation gives said selectmen or assessors written
35 notice that it has performed its duties under this section.
36 And nothing herein contained shall be construed to limit
37 or qualify the rights of flowage conferred upon the cor-
38 poration by any provision of this act or which it may pos-
39 sess under any law of the state.

(f) Actions at law or in equity in the courts of this
2 state or before the public utilities commission or industrial
3 accident commission may be brought by or against the cor-
4 poration as if it were a private corporation except that its
5 property may not be attached, trusteeed, or sequestered, but
6 if a judgment recovered against it is not paid within thirty
7 days, its personal property may be seized on execution, pro-
8 vided further, however, that rights granted by said cor-
9 poration by way of mortgage may be enforced as specified
10 in such mortgage.

(g) The first meeting of the corporation may be called
2 by any incorporator by mailing, postage prepaid, a written
3 notice naming the time and place of such meeting to each

4 of the other incorporators seven days, at least, before the
5 day of the meeting, or the first meeting may be called by
6 any justice of the peace as provided by sections thirteen
7 and fourteen, chapter fifty-one, of the revised laws of nine-
8 teen hundred sixteen.

Sect. 13. Whenever the governor and council shall so
2 order, the commissioners shall organize themselves into a
3 corporation with any suitable name which shows that it is
4 an agency of the state with all and the same powers and
5 with the same limitations as herein provided for the "State
6 of Maine Water Storage Corporation," to investigate and
7 to construct and carry out any particular plan and project
8 for the conservation, storage and control of waters and the
9 financing and management of the same at any particular
10 place or locality or on any particular water system, by pro-
11 ceeding as hereinbefore specified in subdivision (g) of sec-
12 tion twelve.

Sect. 14. Upon the completion of the organization of any
2 corporation herein provided for, the state land agent, or
3 such other person as the governor and council may desig-
4 nate, is hereby authorized, empowered and ordered under
5 the direction of the governor and council to convey to such
6 corporation by appropriate deeds or other instruments such
7 state, public or reserve lots or any part thereof or any
8 interest therein that shall be deemed by such corporation
9 to be necessary to be taken by it for the purposes of this

10 act, receiving compensation therefor at the reasonable
11 valuation thereof.

Sect. 15. The state of Maine water storage corporation
2 and any other corporation organized by the commission as
3 herein provided shall assess upon all the lands, property
4 and water powers benefited by any completed project a
5 reasonable charge, and such corporation shall publish its
6 rates and charges with the public utilities commission and
7 any person aggrieved thereby may proceed against such
8 corporation as provided in the case of public utilities in
9 chapter fifty-five of the revised statutes of 1916, as the
10 same now are or may hereafter be amended.

Sect. 16. No cost of acquisition, construction or main-
2 tenance of any project for the conservation, storage, or
3 control of water shall in any manner be assessed against
4 or collected from any person not benefited thereby, even
5 though such person may be benefited by other projects,
6 nor shall the property or earnings of one project be mort-
7 gaged for the benefit of any other project unless the govern-
8 or and council shall have determined that such two or more
9 projects are integral and essential parts of the same system
10 and shall have authorized such mortgage.

Sect. 17. Any corporation organized as herein provided
2 may borrow money for the purposes of acquisition of land,
3 water rights, privileges and easements, including flowage
4 rights, necessary for any storage project and the purchase
5 of supplies and materials for and the construction of dams,

6 reservoirs and basins and for the obtaining of surveys and
7 specifications pertaining thereto, in anticipation of the issue
8 and sale of bonds for the financing of said project, by
9 issuing its notes or temporary certificates of indebtedness
10 and which may be made payable from the funds when and
11 as received from the sale of bonds or collection of assess-
12 ments. No liability ex contractu or ex delicto of the corpo-
13 ration shall be construed to be the liability of the state and
14 no indebtedness of the corporation evidenced by any con-
15 tract, note, certificate or mortgage bond shall be construed
16 to be the indebtedness of the state except as such indebted-
17 ness is the indebtedness of the property of the state express-
18 ly therein pledged as security therefor. No issue of mort-
19 gage bonds shall be made without provision therein for
20 redemption of the whole issue by serial payment or sinking
21 fund within forty years from date of issue.

Sect. 18. Any corporation organized as herein provided
2 shall have the right to contract with other persons and
3 corporations and with states and municipalities owning,
4 controlling or using water, water rights and powers and
5 dams and other storage structures and facilities on any
6 water system on which such corporation is engaged in the
7 conservation, storage and control of water, in relation to
8 conservation, storage and control of water thereon and the
9 assessment and collection of reasonable charges in respect
10 thereof, such contracts to be for a period of not more than
11 forty years.

Sect. 19. No contract made by any corporation herein
2 provided for calling for the expenditure of more than
3 twenty-five thousand dollars shall be valid unless and until
4 approved by the governor and council and in the employ-
5 ment of workmen and the advertising for bids and for the
6 awarding of contracts, any such corporation shall be
7 governed by and construed to be subject to sections thirty-
8 six and thirty-seven of chapter forty-nine of the revised
9 laws of 1916, as the same now are or as they may be here-
10 after amended.