

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

EIGHTY-FIRST LEGISLATURE

SENATE

NO. 303

In Senate, March 28, 1923.

Presented by Senator Wadsworth of Kennebec, read and adopted and 5,000 copies ordered printed. Sent down for concurrence.

L. ERNEST THORNTON, Secretary.

STATE OF MAINE

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

Whereas, the message of the governor in support of his veto of the Kennebec Reservoir Company charter and his proclamation following the passage of the same over his veto bring in question the integrity of the members of this legislature,

Resolved: That the publication by Honorable Percival P. 2
Baxter, Governor, of an official proclamation demanding 3
that the Act to Create the Kennebec Reservoir Company 4
be referred to the people at an election to be held in Septem- 5
ber, nineteen hundred and twenty-four, notwithstanding its 6
passage by majorities of twenty-two to seven and one hun- 7
dred and twenty-one to twenty-five in the two Houses, re-

8 spectively, and his message in support of his veto of that
9 measure before it was finally passed by the above majorities,
10 demand a formal statement by this legislature. Such a state-
11 ment is necessary in order that the people of this state, to
12 whom that proclamation was directed, and whose fortunes
13 rather than the fortunes of any individual or group of in-
14 dividuals are most deeply involved, may not be misinformed
15 by hasty or an incomplete presentation of the issue; and be
16 it further

Resolved: That the following statement and recommenda-
2 tion be, therefore, adopted, spread upon the journals of
3 these two Houses, and respectfully recommended to the at-
4 tention of the citizens of this state:

THE GOVERNOR'S CHARGES

Governor Baxter, in his veto message, charged those who voted in support of the bill with unfaithfulness to their oaths of office, and characterized the charter as an attempt to obtain from the state valuable property and rights without making just compensation and otherwise to the great disadvantage of the public. In substance, he charges the proponents of the bill with an attempt to defraud the state; and the members of this legislature with ignorantly or corruptly permitting such fraudulent purposes to be consummated.

This makes the merits of the bill, its objects and the manner in which they are sought to be accomplished, a direct issue.

WHAT IS PROPOSED

The fact that the bill has been unanimously reported by a

special joint committee consisting of the Judiciary and Interior Waters Committees, after a widely advertised public hearing at which no opposition appeared, and that it was passed by overwhelming majorities in both Houses after debate in both, and that it was again passed over the veto by the majorities first above stated, this fact raises a fair presumption in favor of the merits of the bill, it being assumed that the members of this legislature, as well as the governor, are naturally moved by honorable motives. But the legislature does not shrink from an inquiry into the merits of the measure; it invites it.

The purpose of the charter is to enable the owners of the principal water-power driven industries on the Kennebec river to provide, entirely at their own expense, for the storage of the flood waters of the Dead River basin so that they may be available for use when otherwise there would be low water in the Kennebec and production reduced or made more expensive and labor thrown out of employment.

Now, twelve billion cubic feet of flood waters which are annually precipitated upon the Dead River storage area flow down the Kennebec river to the sea at a time when general high water prevents its utilization. At other seasons of the year the water in the Kennebec and its tributaries is so low that production has to be curtailed and labor thrown out of employment. For example, during the early months of the present winter more than \$30,000 in wages were lost at the Lockwood mills, in Waterville, alone, and great losses both in production and wages were suffered in the paper industries

at Madison and Waterville. Where operations are conducted by the combined use of water and steam, the extra expense enters into the final cost and must be paid by ultimate consumers or constitute a serious impediment to the industries of this state in competition with those located in other states nearer the markets and the sources of raw materials.

Briefly, this is the situation which the bill undertakes to remedy by saving these waters when they are not needed, for use when they are needed. It will add to the useful resources of the Kennebec basin, without taking away from it any of the storage it now has, nearly one-half as much—40% to be exact—as all of its present storage above Bingham; three-quarters as much as the entire Rangeley Lake system furnishes the Androscoggin basin; 40% of all of the present storage on the Androscoggin river and its headwaters; one-half as much as Ripogenus now furnishes the Penobscot industries; more than three times as much as all of the existing storage on the Saco river.

And this is solely a saving of what is now annually being wasted.

So much for the primary objects of the bill.

NOW AS TO THE METHOD OF ACCOMPLISHMENT

Business industries on the Kennebec river, appreciating what this means to the most successful operation of their plants, propose to develop this storage by building a reservoir dam on the Dead river, at the head of Long Falls, from which the stored waters will be turned into the Kennebec when they are

needed to run the mills to capacity, exactly as is now being done with the Rangeley lakes and the Aziscohos storage on the Androscoggin and with the West Branch storage on the Penobscot.

They propose to furnish private capital for the entire expense of the development and for the entire cost of maintenance and operation after it is completed. They cannot, and do not ask for authority to compel any individual or corporation to contribute against his will. They cannot, and do not ask for authority to require any benefited owner, large or small, to pay any compensation for the benefits received.

Those benefits will be enjoyed by all of the industries, and all of the water powers on the Kennebec river because all suffer from low water at the same time; and the assurance of abundance of water at all times will encourage the location of industries on powers which are not now used, thus increasing the business and the taxable property of the state without any expense to the state.

No tax exemptions or other concessions are asked. Wherever roads are flowed out, others, believed to be equally as convenient, are to be built, at the expense of the company, and to the satisfaction of the county commissioners.

Payment is to be made for all property taken or flowed, whether privately or publicly owned. If the value, or the damages, cannot be agreed upon, they are to be fixed by public officials and the courts of the state under the same general law which governs such cases wherever any public utility takes land

or any mill dam causes flowage. The company may be required, by any owner of property affected, to put up security for the payment of damages, while the amount is being determined if any owner so demands.

THE OBJECTIONS

The principal objection now raised by the governor, is that the state may be deprived of property and rights without an opportunity to get fair compensation, although the message contained the further point, that the passage of this bill would definitely settle the so-called water power issue in favor of private development, as opposed to state ownership and control. Some other objections of less importance have been raised, and it is fair that all should be stated in order that the public may best decide whether those legislators who have supported this measure are necessarily false to their oaths.

It has been said that this charter expressly exempts the company from the control of the public utilities commission. If this were so, the importance of the exemption must be weighed in connection with the fact that the incorporators propose to finance the development themselves and to bear the cost of operation, and that there is no necessity for regulating charges for the benefits conferred upon others because the company is given no power to make such charges.

But it is not true that the charter exempts the company from such control. It makes no mention of it, and the company will, therefore, automatically, pass under the jurisdiction of the public utilities commission, whenever the legislature sees

fit to extend that jurisdiction to log-driving or to storage reservoir corporations generally.

PUBLIC OR PRIVATE DEVELOPMENT

Governor Baxter said, in his veto message, that the granting of this charter would definitely eliminate the water power issue and be construed as an adoption of a settled State policy in favor of development of water power resources by private capital.

Whether such a consummation is to be desired is not properly a matter for discussion in this statement; but in answer to the implication that any action by this Legislature tending to the establishment of a fixed policy is an evidence of bad faith or of disloyalty to the official oath, it is hereby pointed out, that:

1. There has been no sufficient evidence before this Legislature, either by way of action of its members on other questions or through resolutions, recommendations or other well-established methods of representations from the public, no sufficient evidence to indicate that the demand for State ownership or control is widespread enough to make its accomplishment within the near future probable.

2. The present State Water Power Commission, in its last report, indicated the importance of the early establishment of some fixed policy in the following words:

“The Commission wishes to state its belief that the present disinclination to develop Maine power is due largely to the lack of a definite State policy toward such development. We believe that little development

can be expected beyond the demands of actually existing markets until the State formulates a definite policy which the business world believes to be relatively stable and permanent.”

3. Governor Baxter, in his inaugural message to this Legislature, in discussing the importance of speedy development of water resources, declared that he could not recommend immediate activity by the State on account of its present financial condition, and then said :

“Shall charters be granted to private companies to develop water storage? The end to be sought is full utilization of Maine’s water resources, for, every water horse power developed, whether used for public or private purposes, means that our people and industries thereby become less dependent upon the coal supply. We all want development and if the State does not undertake it, private interests should be allowed to do so, with the State’s interests fully safeguarded.”

4. It has been repeatedly stated in public, and not denied, that the Kennebec Reservoir bill was submitted to the Governor for his examination, and that he was invited to suggest changes or additions before it was introduced in this Legislature. No such suggestions have been made except as they appear in the veto message and the proclamation which followed passage of this bill over the veto.

RETURNS TO THE STATE

It is on the subject of returns to the State that the Legis-

lature has been most bitterly, and, we insist, most unjustly assailed.

The veto message said:—

“The year 1868 will ever be known as the year of the State Land Steal; and I hope the year 1923 will not be remembered by any similar calamity.”

The proclamation, after referring to the alleged irregularities in the disposal of timber lands in 1868, continued:—

“In 1923 the eighty-first legislature has just granted to another private corporation water storage and power privileges worth millions of dollars.”

Let this be examined in the light of exactly what provisions exist for securing to the State the full value of all of the property, rights and franchises which are being granted. Let it be done without prejudice or the heat of passion which sometimes immediately follows spirited contest.

First, if the State ever does adopt a public ownership law, it is expressly provided in the charter that it may take the property and franchises of the Kennebec Reservoir Company at the expiration of a term which no person has claimed to be unreasonable without paying anything for the franchise and without payment for the physical property of anything above its then fair value, and in no event in excess of its actual cost. So the State would get an existing, completed project without paying one dollar of profit to the private owners.

Second; as to the return to the State for the property and franchises granted.

The charter provides payment in cash of the full value of all lands, flowage rights and other property received from the State, just as such things are to be paid for to private owners whose property is taken or damaged. The Company cannot fix the price but it must pay whatever price is fixed by the Courts.

This covers everything except the right as a storage reservoir company to store and make useful the flood waters which are now going to waste.

This right carried into execution is of great value both to the public and to the owners of water powers where the use of the stored waters is to be made. This Legislature has not attempted to appraise the value of such a franchise, nor to apportion what part of that value is attributable to the existence of the storage facilities to be applied to the existing power sites, nor what part should be credited to the existence of the power sites where the stored waters would be used. The storage would be valueless without the power sites below, and the power sites would be of less value without the possibility of the storage.

It has not been the policy of the State to tax such franchises. On the contrary, for the excellent reasons stated in the Governor's inaugural message and quoted above, the State has encouraged such developments because it was believed to be a very desirable method of advancing the industrial prosperity of the State as a whole.

Notable examples of this practice are the Azischohos storage

on the Androscoggin chartered in 1909; the west branch and Ripogenus developments on the Penobscot under State charters, and the more recent Aroostook charter granted in 1921 and approved by the present Governor.

This Legislature, however, is not unaware of the State's right to an income from such franchises if it is deemed expedient to impose it and the Kennebec Reservoir charter does not deprive the State of that source of income whenever this or any subsequent Legislature sees fit to demand it. All that it fails to do in this respect, is, to place upon the development of the industries on the Kennebec a charge which is not placed upon similar industries in other river basins of the State of Maine.

Under the laws of this State, it is competent for the Legislature, whenever "it is deemed expedient to exercise it, to put into one class, all corporations having express grants from the Legislature to control the waters of Great Ponds, and impose a tax upon the franchises of such corporations; that is, upon the right to carry on their corporate business and to exercise their granted powers. . . . Taxes of this kind are now imposed upon railroad, express, telephone and telegraph companies, and savings banks. The power of the State to impose franchise taxes seems to be plenary, and it may not only impose them, but it may measure their amount by any standard it sees fit to adopt." This quotation is from the Answers of the Justices to the Legislature of 1919, which may be found printed in full in the 118th volume of the Maine Reports.

The Kennebec Reservoir charter does not exempt it from

any tax now or hereafter imposed upon such corporations; and whenever the Legislature does enact a general franchise tax law for storage reservoir companies, it will automatically fall upon this Company.

This Legislature regrets exceedingly that it did not occur to Governor Baxter to state these facts in full.

THE REFERENDUM

While sending this Act to a referendum will entail still further delay in the development of this great natural resource and the enjoyment of its benefits by the State as well as by the industries directly affected, this Legislature welcomes such a referendum.

It insists, however, that this referendum shall be at a time when this question will be decided upon its merits, entirely divorced from any political issues or political aspirations. It is a plain business proposition, whether the people of the State of Maine want the State to go into the water storage business or whether they believe that it can be more efficiently and economically done by private capital.

There is no reason for delaying its decision until 1924, as advocated by the Governor. There is every reason for prompt action in a matter which so vitally concerns the future prosperity of the State.

We join with the Governor in calling for a referendum on this act, but we insist that such a referendum should take place at the earliest possible date.

To delay until 1924, as advocated by the Governor, means

one more year when the flood waters of the Kennebec can run to waste.

We therefore urge all good citizens of this State to join in signing petitions calling for an election at which this issue may be decided, the same to take place during this year of 1923.