

MAINE STATE LEGISLATURE

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EIGHTY - THIRD LEGISLATURE

House Document

No. 189

H. P. 865 House of Representatives, Feb. 17, 1927.

On motion of Mr. Piper of Jackman, tabled pending reference to a committee and 1,000 copies ordered printed.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Piper of Jackman.

STATE OF MAINE

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

AN ACT to Create the Kennebec Reservoir Company and
Define the Powers Thereof.

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

Section 1. Archibald R. Graustein, H. deForest Lock-
2 wood, George S. Williams, Waldo E. Pratt, Garret Schenck,
3 W. E. Winchester, Fred C. Bagley and Walter S. Wyman,
4 their associates, successors and assigns are hereby made a
5 body corporate under the name of the Kennebec Reservoir
6 Company, with all the rights, powers and privileges here-
7 inafter named.

Sect. 2. Said corporation is authorized and empowered
2 to fix the amount of its capital stock, and the classes there-

3 of, and to increase the same from time to time, not exceed-
4 ing, however, in the aggregate two million dollars.

Sect. 3. Said corporation is hereby authorized and em-
2 powered to build dams and other necessary works and struc-
3 tures on Dead river, at or near the head of Long Falls, near
4 the southeasterly corner of township three, range four, in
5 the county of Somerset, for the purposes of creating stor-
6 age basins and reservoirs to retain and control the waters
7 of Dead river and the tributaries thereof, thereby increas-
8 ing and making more constant the flow of water in the Ken-
9 nebec river, for use at all seasons of the year for manu-
10 facturing and power purposes on said Kennebec river and
11 for facilitating the driving of logs and lumber on Dead river.
12 And in order to facilitate the driving of logs and lumber
13 down said Dead river without unnecessary waste of water,
14 said corporation is authorized to build and maintain dams,
15 side dams, sheer booms, remove rocks, make embankments
16 and other improvements on said Dead river from the loca-
17 tion of its reservoir dams to its union with the Kennebec
18 river.

Sect. 4. Said corporation is authorized by means of its
2 said works to hold, store and retain said waters in any
3 reservoir or storage basin so created, and to discharge and
4 release the same and control the volume and flow thereof
5 for the uses and purposes and subject to the restrictions
6 aforesaid. It may make such reasonable rules and regula-
7 tions as may be deemed necessary for the most advantageous

8 use thereof, and is authorized to contract with owners and
9 users of water power benefited by said development for de-
10 fraying the cost thereof in any manner which may be agreed
11 upon.

Sect. 5. Said corporation is authorized and empowered,
2 when subscriptions to its capital stock at least of three hun-
3 dred thousand dollars have been made, to acquire by pur-
4 chase or otherwise, or to take and hold, as for public uses,
5 all, but not less than all, dams, booms, piers, rafts and other
6 property used or useful in the driving or floating of logs or
7 lumber, which may at the time of such purchase or taking,
8 be located in or on any part of said Dead river, between the
9 mouth of Alder stream and the mouth of Dead river, to-
10 gether with the dam at the outlet of Big Spencer pond and
11 such works and improvements in and on the outlet stream
12 from said outlet to Dead river, belonging to the Kennebec
13 Log Driving Company or to any other corporation author-
14 ized by law to drive on said section of Dead river or on
15 said outlet stream, including so much of the franchise or
16 franchises as relate to driving on said section or on said out-
17 let stream, and such owner or owners are authorized and
18 empowered to sell the same to it; provided, however, that
19 the acquisition of such franchise or franchises shall not
20 impose any duties or burdens, or create any conditions, lim-
21 itations or restrictions inconsistent with the franchises,
22 rights and privileges elsewhere in this act conferred upon
23 this corporation. All proceedings in relation to said taking

24 and the assessment of damages therefor shall be as provided
25 in chapter sixty-one, sections twelve to twenty-one, both in-
26 clusive, of the revised statutes; provided, that the legality
27 of such taking shall not be affected by an omission of this
28 corporation to include in its notice of taking mention of
29 any specific item or items of property, or of any such log
30 driving corporation owner, unless it be shown that such
31 omission was made with fraudulent intent. Subject to the
32 last preceding exception, any notice of taking filed as pro-
33 vided by law, unless otherwise expressly stated, shall be
34 deemed to be notice of taking all that this corporation is
35 authorized by this section to take, and all persons and cor-
36 porations affected thereby shall have the same rights and
37 be subject to the same duties as though they and the prop-
38 erty so affected were fully described, and may be heard and
39 enforce their rights accordingly.

The dams, booms, piers, rafts and other property, includ-
2 ing the dam at the outlet of Big Spencer pond and works
3 and improvements in the outlet thereof, described in this
4 section as the property of the Kennebec Log Driving Com-
5 pany, are meant to include all of the works and facilities
6 within the territory described herein which were formerly
7 owned and used by the Dead River Log Driving Company
8 and are now owned, used or controlled by the Kennebec
9 Log Driving Company with all additions thereto made or
10 acquired by or under the latter company. If the Kennebec
11 Reservoir Company shall offer in writing to pay the Ken-

12 nebec Log Driving Company as full compensation for all
13 of said property, including so much of its franchise as is
14 mentioned in this section, forty thousand dollars, or a sum
15 equal to the amount of the Kennebec Log Driving Com-
16 pany's existing indebtedness on account of said property,
17 if the same be less than forty thousand dollars; and if such
18 offer is not accepted in writing within twenty days after its
19 receipt, said Kennebec Reservoir Company may, at its op-
20 tion, take the whole or any part or parts of the same as
21 aforesaid, and may exercise and enjoy the franchises men-
22 tioned in the next section hereof to the exclusion of the
23 Dead River Log Driving Company and the Kennebec Log
24 Driving Company, paying them or either of them only for
25 so much of said property as it may elect to take as for pub-
26 lic uses as aforesaid, if any, and no more.

Sect. 6. From and after the time when this corporation
2 shall have acquired by purchase or otherwise, as provided
3 in section five of this act, the properties and franchises
4 therein mentioned, or the Kennebec Log Driving Company
5 shall have failed to accept a written offer therefor as pro-
6 vided in section five, as to so much as is described in the
7 last paragraph of said section five, and it has taken by pur-
8 chase or otherwise that belonging to others than the Ken-
9 nebec Log Driving Company and the Dead River Log Driv-
10 ing Company, it shall drive all logs and lumber that may
11 be in said Dead river below the mouth of said Alder stream
12 which flows into the North branch and all logs and lumber

13 which may be delivered to it at the dam at the foot of Big
14 Spencer pond, or in said outlet stream below the dam, in-
15 cluding all area flowed by its dams as far as the same may
16 extend up the South branch of Dead river, landing them
17 in Kennebec river, or against any drive that may then be
18 passing through or held in Kennebec river at that point,
19 or behind booms and piers across, and near the mouth of
20 Dead river; at either of which places they are to be taken
21 up by the owners, or others having authority to receive
22 them, without further obligation on the part of said Ken-
23 nebec Reservoir Company; provided, that said logs and lum-
24 ber shall not be turned over this corporation's reservoir dam
25 against said Kennebec Log Driving Company's written pro-
26 test that they cannot then be safely discharged.

Sect. 7. This corporation shall be required to make one
2 drive per year. It shall be started from the mouth of Alder
3 stream not later than June first and from all other points
4 seasonably for delivery as a unit; and reasonable effort be
5 made to deliver it at the point where Dead river empties
6 into Kennebec river at The Forks to be taken up by the
7 Kennebec Log Driving Company before or at the time the
8 rear of the main Kennebec drive passes said point. It shall
9 not be required to drive from any starting point any logs
10 which shall not be there when the rear of its drive shall be
11 started from that point nor to drive the same season any
12 logs which shall not be delivered to it before the rear of its
13 drive passes the point of attempted delivery.

This corporation shall remove all growth on the area flowed
2 by it seasonably to prevent it from falling and being carried
3 away by the water. It shall keep the area at the mouth of
4 all tributaries flowing into its reservoir and Dead river be-
5 low reasonably clear for the entrance of logs and lumber
6 during the driving seasons, and shall boom logs and lumber
7 driven into it from said tributaries. Owners landing logs
8 or lumber within the flowed area shall deliver them within
9 drivable waters and boom the same. Drivable waters in
10 this section shall be understood to mean water within a
11 contour line representing a twenty-five foot head on the
12 reservoir dam.

One or more persons, firms or corporations desiring to
2 drive not less than five thousand cords of logs or pulpwood
3 after the aforesaid annual drive has been made by this
4 corporation may give notice thereof to this corporation in
5 writing. This corporation may elect, in writing within
6 twenty days, to make such drive itself, whereupon it shall
7 undertake and complete the same within the limits and sub-
8 ject to the regulations governing said annual drive, as far
9 as the same are applicable, and receive the same tolls there-
10 for, or, if it does not so elect, the owners may make the
11 drive at their own expense. This corporation shall make
12 reasonable effort to land any such extra drive or drives
13 driven by it in the Kennebec river, at The Forks, immediate-
14 ly after, and not before the regular drive of the Kennebec
15 Log Driving Company shall have passed over the dam at

16 Solon; and delivery by it to said Kennebec Log Driving
17 Company at The Forks, or behind booms or piers in the
18 mouth of Dead river shall terminate its responsibility. The
19 Kennebec Log Driving Company is not bound to accept
20 such drive unless delivered at The Forks within such limits
21 as to time.

This corporation shall be responsible for sufficient water
2 to make the regular and one such extra drive annually, if
3 so much shall have flowed into its reservoir during the cur-
4 rent year, and shall provide water for such additional drives
5 as may be made as aforesaid if it then has it.

Sect. 8. This corporation is authorized and empowered
2 to collect and receive tolls for driving logs and lumber
3 within the area aforesaid, and parts thereof, at the follow-
4 ing rates per thousand board feet, viz:

Between the mouth of Alder stream and the point of flow-
2 age caused by this corporation's dam located at Long Falls,
3 twenty-five cents;

From the point of delivery within the flowage area as de-
2 fined in section seven, to The Forks, seventy-five cents;

From said dam, or any point west of the mouth of Spencer
2 stream, to The Forks, fifty cents;

From the mouth of Spencer stream, or any point west of
2 the mouth of Enchanted stream, to The Forks, forty cents;

From the mouth of Enchanted stream, or any point west of
2 the mouth of Salmon stream, to The Forks, thirty cents;

From the mouth of Salmon stream, or any point east, to
2 The Forks, ten cents;

From the dam at the foot of Big Spencer pond or any
2 point in the outlet stream to Dead river (in addition to the
3 aforesaid tolls for driving on Dead river), thirty cents.

These tolls are to remain in force for a period of ten years,
2 and thereafter until revised in any manner provided by
3 the legislature. The word "west" used in designating di-
4 rection in this section means the course from the mouth of
5 Dead river towards its sources, notwithstanding the actual
6 direction at any given point.

Sect. 9. Charges for driving logs and lumber, as afore-
2 said, shall be due and payable when the drive to be made
3 by this corporation is completed; and said corporation shall
4 have a lien on all such logs and lumber which it shall drive
5 for the driving of the same as provided in this act, which
6 lien shall have precedence of all other claims except liens
7 reserved to the state and laborers' liens, shall continue for
8 three months after the logs or lumber shall arrive at the
9 place of destination for manufacture or sale, and may be
10 enforced by attachment.

Sect. 10. The owners of logs or lumber to be driven by
2 this corporation shall, on or before the first day of June in
3 that year, file with the clerk of this corporation a correct
4 statement in writing, signed by a sworn surveyor, of all
5 such logs and lumber intended for the regular annual drive,
6 of the number of feet, full scale, with the mark or marks

7 thereon, together with the place from which the logs are
8 to be driven and their destination. This corporation may
9 adopt such statements as correct for the purpose of ascer-
10 taining the amount of tolls to which it is entitled, or cause
11 the same to be scaled. If any owner fails to file such state-
12 ment, the corporation shall give such owner notice of its
13 intention to estimate in some convenient manner the quan-
14 tity of his logs or to scale the same and unless such owner
15 files such statement within seven days after receiving such
16 notice, the estimate or scale of the corporation shall be con-
17 clusive upon such owner.

Whenever this corporation elects to make any later drive
2 as provided in section seven, the foregoing provisions as to
3 filing statements, and the effect thereof, and of failure to do
4 so, shall be applicable thereto, except that the same be filed
5 on or before the date of starting the drive.

Sect. 11. This corporation is authorized and empowered
2 to acquire by purchase from other corporations and indi-
3 viduals who are authorized to drive logs or lumber on any
4 tributaries or on the Kennebec river, and such corporations
5 are authorized and empowered to sell and convey to it, any
6 part or all of their respective properties and franchises for
7 log-driving purposes; and to contract with such corpora-
8 tions and individuals concerning their respective duties as
9 log-driving companies. Provided, however, that no acquisi-
10 tion of the franchises of another corporation and merger
11 thereof with the franchise of this corporation in any man-

12 ner under this or any other section of this act, shall be
13 deemed to qualify or restrict any franchise or other right
14 which this corporation otherwise acquires through this char-
15 ter or from any other source, but shall be deemed to be
16 additional thereto.

Sect. 12. Said corporation is authorized to acquire by
2 purchase, lease or otherwise such lands, properties and
3 rights, including any state, public or reserved lots, as it may
4 require; and when subscriptions to the capital stock thereof
5 to an amount of at least three hundred thousand dollars
6 have been made, it is authorized and empowered to take
7 and hold as for public uses, such lands, properties and rights,
8 including state, public and reserved lots, or parts thereof,
9 as it may require for any of the aforesaid uses and pur-
10 poses, and such material as may be needed for erecting and
11 maintaining any of its dams and works, and all proceedings
12 in relation to said taking and the assessment of damages
13 therefor shall be as provided in said chapter sixty-one, sec-
14 tions twelve to twenty-one, both inclusive, of the revised
15 statutes. Said corporation is also authorized and empow-
16 ered, when subscriptions of the aforesaid amount shall have
17 been made to its capital stock, to flow such lands as may
18 be necessary to carry out the purposes of this act, and the
19 damages therefor and for flowage caused or authorized un-
20 der any other section of this act not otherwise expressly
21 provided unless arranged by mutual agreement, shall be
22 ascertained and determined in the manner prescribed in

23 chapter ninety-seven of the revised statutes; and said cor-
24 poration may also have the benefit of chapter one hundred
25 and ninety-six of the public laws of nineteen hundred and
26 twenty-one. The provisions of this section shall not be con-
27 strued to authorize the taking of property or franchises de-
28 scribed in section eleven otherwise than by purchase.

Provided, however, that this corporation shall not flow out
2 any part of the highway which leads from North New
3 Portland to Dead river and thence to Stratton until it shall
4 have constructed in place thereof, or of such parts as are
5 flowed, highways, or parts of highways connecting the parts
6 of the present highway not so flowed, reasonably safe and
7 convenient, as follows: one leading from a point south of
8 the Ledge House, on said road from North New Portland,
9 where the reservoir begins, to Stratton, passing east of
10 Bigelow mountain; the other from the same point and lead-
11 ing by the east side of the reservoir to a point near the dam
12 and thence on the dam or north thereof to the opposite side
13 of Dead river. This corporation may acquire by purchase,
14 or take as for public uses, lands and materials for the loca-
15 tion and construction of such highways, and all proceedings
16 in relation to said taking and the assessment of damages
17 therefor shall be as hereinbefore provided for the taking
18 of lands and materials for other purposes. Such highways
19 shall be constructed to the approval of the county commis-
20 sioners of the counties in which they, or the respective parts
21 of them, are situated. This corporation shall give written

22 notice to the clerks of the boards of county commissioners
23 of Franklin and Somerset counties before it proceeds to
24 build such roads, and shall locate them as directed by the
25 joint action of said boards if it receives such directions in
26 writing within thirty days after the giving of its notice as
27 aforesaid; otherwise, the corporation shall fix the location.
28 The roads so constructed shall be and become public high-
29 ways, and all rights therein and duties and obligations in
30 respect thereof shall be the same as though said highways
31 had been located, laid out and constructed in manner pro-
32 vided in the general laws of the state. Such construction
33 shall work a discontinuance of the roads and parts of roads
34 so flowed with the same effect as if discontinued in the
35 manner provided by statute, and shall constitute full set-
36 tlement for all damages to the state or any sub-division
37 thereof for flowing said existing highway; provided, how-
38 ever, that this shall not be construed to release this corpora-
39 tion from any legal liability to abutters for damages caused
40 by such flowage or changed location.

Sect. 13. The state land agent, or such other person as
2 the governor and council may designate, is hereby author-
3 ized, empowered and ordered under their direction, to con-
4 vey to said corporation by appropriate deeds or instruments,
5 such state, public and reserved lots or any part or portion
6 of the same or interest therein as shall be deemed by this
7 corporation to be necessary or taken by it for any of the
8 purposes of this act. Said deeds or other instruments shall

9 contain a condition subsequent revesting in the state the
10 title to the property and rights conveyed if said corporation
11 fails to pay the purchase price therefor as determined in
12 manner hereinafter provided within one year from the time
13 so determined, and said land agent, or other person desig-
14 nated by the governor and council, is hereby authorized
15 under their direction to agree upon the consideration for
16 the purchases and damages for taking, or flowing said lots
17 or parts thereof. And in case the parties are unable to agree
18 upon said consideration or damages, the same are to be de-
19 termined in the manner provided in section twelve of this
20 act; and said land agent or other person designated by the
21 governor and council is authorized to represent and act for
22 the state in any proceedings to fix the consideration and
23 damages as herein provided.

Sect. 14. This corporation is empowered to authorize the
2 selectmen of any town, the assessors of any plantation or
3 organized township, and the selectmen of a town or as-
4 sessors of a plantation or organized township adjoining any
5 unorganized township, to take up from any existing ceme-
6 tery in such town, plantation or organized township, or un-
7 organized township respectively, which will be flowed by
8 any of its dams, the bodies and remains of all deceased per-
9 sons buried therein, and all headstones and markers at the
10 graves therein, and remove said bodies and remains to a new
11 cemetery to be selected by said selectmen or assessors and
12 there decently inter the same, and properly reset such head-

13 stones and markers over such dead bodies and remains.
14 Such new cemeteries shall be located with due regard to
15 the convenience of all the inhabitants of the respective com-
16 munities in which they are located. Said selectmen and
17 assessors are in each case, within thirty days after being
18 so requested by this corporation, to select the place for a
19 new cemetery and fix the bounds thereof, and to proceed
20 with reasonable diligence to cause the removal of the bodies,
21 remains, headstones and markers, as aforesaid. If they
22 fail to do so, this corporation is authorized and empowered
23 to make such selection or selections and cause such remov-
24 als to be made. All of the expenses incurred in procuring
25 the lands necessary for such cemeteries, in clearing and fit-
26 ting the ground and fencing the same, and in the taking up
27 and removal of all of the remains of all deceased persons,
28 and in the removal of said headstones and markers, and the
29 interment of said remains and resetting of said headstones
30 and markers shall be paid for by this corporation.

No claim shall be made against this corporation for not
2 complying with the terms herein set out unless the same is
3 made within sixty days after this corporation gives said se-
4 lectmen or assessors written notice that it has performed its
5 duties under this section. And nothing herein contained
6 shall be construed to limit or qualify the rights of flowage
7 conferred upon this corporation by any provision of this act
8 or which it may possess under any law of the state.

Sect. 15. Said corporation is authorized and empowered

2 to purchase, hold and sell its own stock in accordance with
3 the provisions relating thereto, which shall be provided for
4 in the by-laws, but it shall not purchase or hold said stock
5 except for the purpose of re-sale, or for a longer period of
6 time than one year; provided that said corporation may re-
7 tire any part or any class of its capital stock or substitute
8 another class therefor in any manner provided in its by-
9 laws and not inconsistent with the laws of the state.

Sect. 16. Said corporation may from time to time borrow
2 money for any lawful purpose and may issue bonds on such
3 terms as the stockholders may determine, secured by pledge
4 or mortgage of all the property, franchises, and income of
5 the corporation or any part thereof for the payment of the
6 sums so borrowed and interest thereon; provided, that the
7 total amount of bonds outstanding shall at no time exceed
8 twice the amount of capital stock paid in in cash.

Sect. 17. The State of Maine reserves the right to acquire
2 by proper legislation and by such agencies as it may provide
3 for the purpose the whole or any part of the franchises and
4 rights hereby granted, and the whole or any part of the
5 structures erected by authority of this act upon the payment
6 of just compensation; but such compensation shall not in-
7 clude the value of the franchises granted by this act, and
8 shall not exceed the cost of the property and franchises so
9 taken, and just compensation for damages by severance if
10 less than the whole is so taken; provided, that said right
11 shall not be exercised within fifty years from the date of

12 approval of this act without the consent of said corporation,
13 its successors or assigns.

Sect. 18. This corporation shall not generate, sell or dis-
2 tribute electricity in any manner, and shall not dispose of its
3 property or franchises to any corporation which has author-
4 ity to do so.

Sect. 19. The first meeting of this corporation shall be
2 called at Augusta by a notice signed by any two of the cor-
3 porators named in section one, setting forth the time, place
4 and purpose of the meeting. Such notice shall be mailed
5 to each of the corporators, postage paid, seven days at least
6 before the day of such meeting. Any corporator may be
7 represented at such meeting by proxy.

Meetings of the board of directors may be held, for any
2 purpose, within or without the state if the by-laws so pro-
3 vide.

STATEMENT OF FACTS

In 1923 the Great Northern Paper Company, Hollingsworth & Whitney Company, Edwards Manufacturing Company, Shawmut Manufacturing Company, Lockwood Company and Central Maine Power Company asked the Maine Legislature to incorporate the Kennebec Reservoir Company.

The Legislature was asked to confer upon this company the right to build a storage dam at Long Falls on the Dead river, which is the west branch of the Kennebec river. The dam was to be built on public lots and would flow out portions of two or three other public lots. These "public lots" are pieces of land held in trust by the State of Maine, the title to which is to pass to the various towns if and when they are organized. The state does not own them, but simply holds them in trust.

Under the Kennebec Reservoir charter these lots were to be sold to the Kennebec Reservoir Company. The price was to be agreed upon between the company and representatives of the state. If they could not agree, it was to be left to the supreme court. The state was to reserve to itself the right to use the water discharged from the dam for power. This water power was not to be included in the sale. At the end of fifty years the State of Maine was to have the right to repurchase these lots at the price at which they were originally sold, plus the cost of improvements.

The Kennebec Reservoir charter was passed almost unanimously by the 1923 Legislature. It was vetoed by Governor Baxter and then was passed over his veto by an overwhelming vote. Shortly after the Kennebec Reservoir charter was passed over Governor Baxter's veto, he issued a proclamation, stating that he would immediately ask for a referendum on the bill. During the last week of the legislative session a compromise bill, called the Dead River Reservoir Charter, was agreed upon between Governor Baxter and representatives of the Central Maine Power Company. This agreement was hastily made and was not concurred in by several of the corporations interested in the charter. This Dead River Reservoir Charter provided for the leasing of the public lots on Dead river to the new corporation for twenty-five thousand dollars per year for forty years and gave the corporation the use of the land not only for storage purposes, but also for water power purposes. In other

words, while the Kennebec Reservoir bill reserved the water power rights to the state, the Dead River Reservoir bill conveyed them to the corporation for the term of the lease. In the confusion which followed the presentation of this bill to the Legislature by Governor Baxter, the Legislature not only refused to consider the Dead River bill, but repealed the Kennebec Reservoir bill which it had already passed.

In the four years that have gone since 1923 the waters of Dead river have done considerable damage in floods and the industries on the Kennebec river have suffered very material loss from low water at various times.

The Kennebec Reservoir bill in its original form has been introduced into the Maine Legislature of 1927. Should the Legislature wish to amend it so as to include the water power rights, the Central Maine Power Company is ready to contract with the State of Maine for the use of the water discharged from the reservoir, for fifty years, for a sum which added to the interest on the sale price of the lots used for storage purposes will make twenty-five thousand dollars per year. This is upon the assumption that the dam is built in such a manner as to afford the head contemplated when the Kennebec Reservoir bill was originally passed. It is also based on the power company's using the water only at such times as it may be discharged by the storage company or as it would run to waste if it were not discharged.