

MAINE STATE LEGISLATURE

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NEW DRAFT

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 871

S. P. 578

In Senate, Mar. 10, 1933.

Reported by Senator Holmes of Androscoggin from Committee on Judiciary and laid on table to be printed under Joint Rules.

ROYDEN V. BROWN, Secretary.

New Draft of S. P. 221.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-
THREE

AN ACT Relating to Corporations for the Protection and Development
of Forests.

Emergency Preamble. Whereas, the public welfare demands that projects for the protection and development of the forests of the state be immediately undertaken or continued, and

Whereas, during the present economic depression it is impossible to obtain sufficient funds from private sources for these purposes which is resulting in an inability on the part of citizens of the state to obtain employment and a loss of tax revenue to the state, and

Whereas, the Federal Reconstruction Finance Corporation is authorized to make loans to private limited dividend corporations to aid in financing projects for the above said purposes, which are regulated by the state, or a political sub-division thereof and are self-liquidating in character, and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, now therefore

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

Sec. 1. Certain private limited dividend corporations, authorized. Three

or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the forest commissioner shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under sections 8 to 13, both inclusive, of chapter 56 of the revised statutes, except where such provisions are in conflict with this act.

Sec. 2. Organization. A corporation formed under this act shall be organized and incorporated in the manner provided for organization of corporations by sections 8 to 13, both inclusive, of chapter 56 of the revised statutes, except where such provisions are in conflict with this act. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this act and that it consents to be and shall be at all times subject to the rules, regulations, supervision and control of the forest commissioner, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules, regulations and orders from time to time imposed by the forest commissioner.

Sec. 3. Directors. There shall not be less than 3 directors, 1 of whom shall always be a person designated by the forest commissioner which one need not be a stockholder.

Sec. 4. Duties of forest commissioner. Corporations formed under this act shall be regulated by the forest commissioner in the manner provided in this act. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this act shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this act pro-rata according to their respective stock capitalizations. The forest commissioner shall

(a) From time to time make, amend, and repeal rules and regulations for carrying into effect the provisions of this act and for the protection and development of forest subject to its jurisdiction.

(b) Order all corporations organized under this act to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the forest commissioner, or to refrain from doing any acts in violations thereof.

(c) Keep informed as to the general condition of all such corpora-

tions, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the forest commissioner.

(d) Require every such corporation to file with the forest commissioner annual reports and, if the forest commissioner shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the forest commissioner may require.

(e) By appropriate order require all such corporations to which Reconstruction Finance Corporation shall have made any loans to comply with the requirements imposed by such corporation in connection with the granting of such loan.

Sec. 5. Rights of forest commissioner. The forest commissioner may

(a) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(b) In his discretion prescribe uniform methods and forms of keeping accounts, records and books, to be observed by such corporations, and prescribe by order accounts in which particular outlays and receipts shall be entered, charged or credited. The forest commissioner shall not, however, be authorized to require any revaluation of the fixed assets of such corporation, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(c) Enforce the provisions of this act and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or for an injunction in the supreme judicial court, which shall have jurisdiction in the county in which the respondent corporation has its principal place of business. The final judgment in any such proceedings shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief.

Sec. 6. Appeal from decision of commissioner. If any corporation organized under this act is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the forest commissioner, or any valuation or appraisal of any of its property made by the forest commissioner, or any failure of or refusal by the forest commissioner to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the governor and council by filing with them a claim of appeal upon which the determination of a majority of the governor and council shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the governor and council in a written mandate to the forest commissioner, who shall abide thereby and take such action as the same may direct.

Sec. 7. Certification of organization. The attorney general shall not certify any certificate of organization of any corporation organized under this act, as provided in section 10 of chapter 56 of the revised statutes, unless he finds that the same conforms to the provisions of this act as well as to the general provisions of chapter 56 of the revised statutes, which are not in conflict with this act, and unless there is endorsed upon the same a certificate of the forest commissioner approving the project for which such corporation is formed.

Sec. 8. Stock regulation. All shares of stock of corporations organized under this act shall have a par value and, except as provided in section 10 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of 6% yearly on stock having a preference as to dividends, or 8% yearly on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest.

Sec. 9. Limitation on stock issue. No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the state of Maine, or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor shall be upon a valuation approved by the forest commissioner.

Sec. 10. Regulation of return to stockholders. Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in section 8 of this act, except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stockholders upon dissolution thereof.

Sec. 11. Surplus earnings. Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in section 8 of this act shall be paid over to the state of Maine prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the forest commissioner shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered.

Sec. 12. Dissolution. Any such corporation may be dissolved at any time in the manner provided by and under the provisions of sections 82 to 97, both inclusive, of chapter 56 of the revised statutes, except that the

court shall dismiss any bill in equity for dissolution of any such corporation filed within 20 years of the date of its organization unless the same is accompanied by a certificate of the forest commissioner consenting to such dissolution.

Sec. 13. Regulation of cutting. Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the forest commissioner, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time.

Sec. 14. Further restrictions. No such corporation shall:

(a) Sell, assign, or convey any real property owned by it, or any right, title or interest therein, except upon notice to the forest commissioner of the terms of such sale, transfer or assignment, and unless the forest commissioner shall consent thereto, and if the forest commissioner shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the forest commissioner for such period as the latter may require; provided, however, that such corporations are authorized to grant options to persons transferring timberlands to the corporation for stock of the corporation or for cash, to repurchase such timberlands, upon dissolution of the corporation, at the price at which they were originally transferred to the corporation.

(b) Pay interest returns on its mortgage indebtedness at a higher rate than 6% annually without the consent of the forest commissioner.

(c) Mortgage any real property without first having obtained the consent of the forest commissioner.

Sec. 15. Issuance of notes and bonds. Any such corporation formed under this act may, subject to the approval of the forest commissioner, borrow funds and secure the repayment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the forest commissioner, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the forest commissioner for such period as the mortgage or trust indenture may specify.

Sec. 16. Protection and development of forests. No project for the

protection and development of forests proposed by any such corporation shall be undertaken without the approval of the forest commissioner, and such approval shall not be given unless:

(1) The forest commissioner shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the forest commissioner shall require of the activities to be included in the project, such statement to set forth the proposals as to (a) fire prevention and protection, (b) protection against insects and tree diseases, (c) protection against damage by live-stock and game, (d) means, methods and rate of, and restrictions upon, cutting, and other utilization of the forests, and (e) planting and spacing of trees.

(2) There shall be submitted to the forest commissioner a financial plan satisfactory to him, setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the forest commissioner as to where such funds are to be secured.

(3) The forest commissioner shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except in so far as the forest commissioner shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the forest commissioner, and that it will at all times comply with such rules, regulations and orders concerning the project as the forest commissioner shall from time to time impose.

Sec. 17. Application of gross income. The gross annual income of any such corporation whether received from sales of timber, timber operations, stumpage permits or other sources shall be applied as follows: first, to the payment of all fixed charges, and all operating and maintenance charges and expenses, including taxes, assessments, insurance, amortization charges in amounts approved by the forest commissioner to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, or to the payment of dividends not exceeding the maximum fixed by this act, or both; third, the balance, if any, in reduction of debts.

Sec. 18. Reorganizations. Reorganization of corporations organized under this act shall be subject to the supervision of the forest commissioner and no such reorganization shall be had without the authorization of the forest commissioner.

Sec. 19. Unconstitutionality. If any term or provision of this act shall be declared unconstitutional or ineffective in whole or in part by a court

of competent jurisdiction, then to the extent that it is not unconstitutional or ineffective, such term or provision shall be in force and effect; nor shall such determination be deemed to invalidate the remaining terms or provisions of this act.

Emergency Clause. In view of the emergency stated in the preamble hereof, this act shall take effect when approved.