

# MAINE STATE LEGISLATURE

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Legislative Document

No. 767

H. P. 1631

House of Representatives, February 19, 1937.

Reported by Mr. Varney from Committee on Judiciary and laid on table to be printed under joint rules.

HARVEY R. PEASE, Clerk.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-SEVEN

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**AN ACT Relating to an Interstate Bridge Authority for the Portsmouth-Kittery Bridge and Approaches Thereto.**

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**Emergency preamble.** Whereas, the state of New Hampshire has enacted an act known as "An Act Relating to an Interstate Bridge Authority for the Portsmouth-Kittery Bridge and Approaches Thereto" to the end that a bridge be constructed across the Piscataqua river between Kittery, Maine and Portsmouth, New Hampshire, and

Whereas, said act is in the nature of a compact to be entered into between the state of Maine and the state of New Hampshire by proper legislative procedure, and

Whereas, an application has been made for certain moneys as a grant by the federal government to aid in financing the construction of the bridge, and

Whereas, the present wooden pile bridge serving as the sole facility for railroad and passenger traffic over and across the Piscataqua river between the state of Maine and the state of New Hampshire is obsolete, unsafe and wholly inadequate to accommodate freight and passenger traffic, and

Whereas, the present traffic conditions in Kittery are a serious menace to public safety, and

In the judgment of the legislature, these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution 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. Compact between Maine and New Hampshire.** The governor, with advice and consent of the council, shall appoint 3 persons resident in this state, as commissioners upon the part of the state of Maine to enter into, with the state of New Hampshire, by and through the commissioners who may be appointed under or by virtue of the laws of the state of New Hampshire, an agreement or compact in the form following, that is to say :

### **Compact**

Whereas, the single highway bridge serving as the sole facility for vehicular traffic over and across the Piscataqua river between the state of New Hampshire and the state of Maine is wholly inadequate to care for and accommodate such traffic over said river between the said two states and therefore causes such traffic congestion in and upon the streets and highways of the city of Portsmouth, New Hampshire and the town of Kittery, Maine, that the lives and property of the citizens of said communities and the travelers on said streets and highways are constantly endangered ; and

Whereas, the antiquated and obsolete wooden pile bridge serving as the sole facility for railroad traffic over and across the Piscataqua river between the state of New Hampshire and the state of Maine is wholly inadequate to care for and accommodate the railroad traffic between the said two states ; and

Whereas, the narrow draw-span of said wooden pile railroad bridge the sole facility permitting passage of water traffic up and down said river is wholly inadequate to permit the passage of steamers and vessels of broad beam from the sea inland to serve the large industrial plants now situate on the banks of said river and therefore constitutes an obstacle to further enlargement of these industries and the development of numerous other industrial sites located so that passage through said bridge is absolutely necessary ; and

Whereas, the only remedy for the conditions now existing is the construction of a bridge across said river which by coordinating the facilities required by vehicular and railroad traffic will remove the obstacle to water traffic ; and

Whereas, the solution of this problem will result in great economy and benefit not only to the states of Maine and New Hampshire but to the nation and will require the cordial cooperation of the states of New Hampshire and Maine in the encouragement of the investment of capital as well as the formulation and execution of the necessary plans and such result can best be accomplished through the joining of the two states of Maine and New Hampshire by and through a common agency;

Now therefore, the said states of New Hampshire and Maine do hereby agree and pledge each to the other as follows:

#### ARTICLE I

Said states agree to and pledge, each to the other, faithful cooperation in the planning, execution and construction of a suitable vehicular and railroad bridge with suitable highway approaches thereto and draw-span therein; holding the same in high trust for the benefit of the nation and of the said 2 states.

#### ARTICLE II

There is hereby created "The Maine-New Hampshire Interstate Bridge Authority" which shall be a body corporate and politic having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other state or by act or acts of congress as hereinafter provided.

#### ARTICLE III

The Authority shall consist of 6 members, 3 residents of the state of New Hampshire and 3 residents of the state of Maine. The New Hampshire members to be chosen by the state of New Hampshire and the Maine members to be chosen by the state of Maine in the manner and for the term fixed and determined from time to time by the legislatures of each state respectively. Any member may be removed or suspended from office as provided by the law of the state from which he shall be appointed.

#### ARTICLE IV

The members of the Authority shall, for the purposes of doing business, constitute a board and may adopt suitable rules and regulations for its management.

#### ARTICLE V

The Authority shall constitute a body both corporate and politic with full power and authority (1) to sue and be sued; (2) to have a seal and

alter the same at pleasure; (3) to adopt from time to time and amend by-laws covering its procedure, rules and regulations governing use of the bridge and any of the other services made available in connection with said bridge, to publish the same, if such publication is necessary or advisable and to cause records of its proceedings to be kept; (4) to construct, maintain, reconstruct and operate an interstate toll bridge over the Piscataqua river between the city of Portsmouth in New Hampshire and the town of Kittery in Maine and for this purpose; (5) to acquire, hold and dispose of personal property for its purposes; (6) to acquire in the name of the Authority by purchase, condemnation, lease or otherwise, any real property and rights or easements therein, deemed by it necessary or desirable for its purposes, and to use such property; (7) to acquire any such real property by the exercise of the power of condemnation in the manner provided by laws and statutes of the said 2 states; (8) to charge and collect fees, fares and tolls for the use of said bridge and other services made available in connection with the said bridge; (9) to make contracts with the United States, the state of New Hampshire, the state of Maine, public corporations or bodies existing therein, and private corporations and individuals; (10) to accept grants and the cooperation of the United States or any agency thereof in the construction, maintenance, reconstruction, operation and financing of the bridge and its highway approaches and to do any and all things necessary in order to avail itself of such aid and cooperation; (11) to employ such assistants, agents and servants as it shall deem necessary or desirable for its purposes; (12) to exercise any of its powers in the public domain of the United States unless the exercise of such powers is not permitted by the laws of the United States; (13) to borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the Authority and to secure the payment of such obligations or any part thereof by pledge of any part of the revenue of the bridge and, (14) to do all other lawful things necessary and incidental to the foregoing powers. All property of the Authority and all property held in the name of either state pursuant to the provisions hereof shall be exempt from levy and sale by virtue of any execution and no execution or other judicial process shall issue against the same. No judgment against the Authority shall be lien upon its property held in the name of either state pursuant to the provisions hereof. No property now or hereafter vested in or held by either state, by any county, city, town, village, district, township or other municipality thereof shall be taken by the Authority without the authority and consent of the state, county, town, village, district or township or other municipality in which it is located; nor shall anything impair or invalidate any bond,

indebtedness of either state, any county, city, town, village, district or township or other municipality nor impair the provisions of law to regulate the payment into sinking funds or revenue derived from municipal property or dedicate the revenues derived from any municipal property to a specific purpose.

#### ARTICLE VI

The Authority shall have such additional powers and duties as may hereafter be delegated to and imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other. Unless and until otherwise provided, it shall make a biennial report to the legislatures of both states, setting forth in detail the operations and transactions conducted by it pursuant to this agreement and any legislation thereunder. The Authority shall not pledge the credit of either state except by and with the expressed authority of the legislature thereof.

#### ARTICLE VII

Nothing in this agreement or compact is intended or shall be construed to affect the laws now existing which vest jurisdiction over or control of railroads in the public service commission of the state of New Hampshire, or the public utilities commission of the state of Maine, or the interstate commerce commission of the United States or any agency of either state or the United States.

#### ARTICLE VIII

The Authority shall elect from its members a chairman, vice chairman, clerk and treasurer and may appoint such officers and employees as it may require for the performance of its duties and shall fix and determine by resolution their qualifications and duties.

#### ARTICLE IX

Expenses incurred by the Authority in the interim between execution of this agreement or compact and the date money received from grants, bonds or revenues shall be available shall be borne by the said 2 states in equal shares and shall be raised as each state shall determine.

#### ARTICLE X

Unless and until otherwise determined by the action of the legislatures of the 2 states, no action of the authority shall be binding unless taken at a meeting at which at least 2 members from each state are present and unless 4 votes are cast therefor, 2 from each state. Each state reserves

the right hereafter to provide by law for the exercise of a veto power by the governor thereof over any action of any commissioner appointed therefrom.

#### ARTICLE XI

Unless and until otherwise determined by the legislatures of the 2 states, the bridge authority shall not incur any obligations for salaries, office or other administrative expenses, within the provisions of Article IX, prior to the making of appropriations adequate to meet the same.

#### ARTICLE XII

The bridge authority is hereby authorized to make suitable rules and regulations not inconsistent with the constitution of the United States or of either state, which shall be binding and effective on all persons and corporations affected thereby.

#### ARTICLE XIII

The 2 states shall provide penalties for violations of any order, rule or regulation of the bridge authority, and for the manner of enforcing same.

#### ARTICLE XIV

**Definitions.** "Transportation facility" shall include railroads, steam or electric, motor truck or other street or highway vehicles, bridges, highways and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of persons or property. "Facility" shall include all works, buildings, structures, stations, appliances and appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of such facility or facilities or any one or more of them. "Real property" shall include land under water, as well as uplands, and all property either now commonly or legally defined as real property or which may hereafter be so defined. "Personal property" shall include choses in action and all other property now commonly or legally defined as personal property or which may hereafter be so defined. "To lease" shall include to rent or to hire. "Rule or regulation" shall include charges, rates, rentals or tolls fixed or established by the bridge authority. Wherever action by the legislature of either state is herein referred to, it shall mean an act of the legislature duly adopted in accordance with the provisions of the constitution of the state.

**Plural or singular.** The singular wherever used herein shall include the plural Consent, approval or recommendation of municipality, how given.

Wherever herein the consent, approval or recommendation of a "municipality" is required, the word "municipality" shall be taken to include any city, town or village district. Such consent, approval or recommendation whenever required in the case of the city of Portsmouth shall be deemed to have been given whenever the city council of the city of Portsmouth or any body hereafter succeeding to its duties shall by majority vote pass a resolution expressing such consent, approval or recommendation; and in the case of the town of Kittery shall be deemed to have been given whenever at a regular town meeting, or special meeting called for that purpose shall by majority of votes of persons present and voting therefor; and in all other cases whenever the body authorized to grant consent to the use of the streets or highways of such municipality shall by a majority vote pass such a resolution.

In witness whereof we have hereunto set our hands and seals under chapter \_\_\_\_\_ of the laws of \_\_\_\_\_ of the state of Maine and chapter \_\_\_\_\_ of the laws of \_\_\_\_\_ of the state of New Hampshire this day of \_\_\_\_\_ 19. \_\_\_\_\_

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**Sec. 2. Filing of compact.** The said agreement or compact, when signed and sealed by the commissioners of each state as therein provided, and the attorney general of the state of New Hampshire, and the attorney general of the state of Maine, shall become binding upon the state of Maine and shall be filed in the office of the secretary of state of Maine.

**Sec. 3. Vacancies, how filled.** If a vacancy shall occur by death, resignation or otherwise of those appointed as commissioners for the state of Maine hereunder, the governor, with the advice and consent of the council, shall fill the same.

**Sec. 4. Appointment of members of the "Authority."** Upon execution of said agreement or compact by the said commissioners of each state as provided herein and the attorney general of the state of New Hampshire and the attorney general of the state of Maine, and the filing of said agreement in the office of the secretary of state of Maine, the governor, with the advice and consent of the council, shall appoint 3 persons resident of this state, one of whom shall be chairman of the state highway commission of the state, ex officio, to be members of the "Maine-New Hampshire Interstate Bridge Authority" provided for in the agreement or compact. The said members of the Authority are hereby vested with all the powers and charged with all the duties provided for in said agreement or compact and this act.

**Sec. 5. Further powers of Authority.** The said members of the Authority of the state of Maine together with the members of the Authority appointed by the state of New Hampshire shall have the power to apply to the congress of the United States for its consent or approval of the agreement or compact entered into by said states; providing, however, that in the absence of such consent of congress or until the same shall have been secured, the said agreement or compact shall be binding on the state of Maine, in all respects permitted by the law of the said 2 states of Maine and New Hampshire, to cooperate for the purposes enumerated in said agreement or compact and in the manner provided therein.

**Sec. 6. Incorporation; powers.** The "Maine-New Hampshire Interstate Bridge Authority" shall be a corporation in the state of Maine and shall have powers (1) to sue and be sued; (2) to have a seal and alter the same at pleasure; (3) to adopt from time to time and amend by-laws covering its procedure, rules and regulations governing use of the bridge and any of the other services made available in connection with said bridge, to publish the same, if such publication is necessary or advisable and to cause records of its proceedings to be kept; (4) to construct, maintain, reconstruct and operate an interstate toll bridge over the Piscataqua river between the city of Portsmouth in New Hampshire and the town of Kittery in Maine and for this purpose; (5) to acquire, hold and dispose of personal property for its purposes; (6) to acquire in the name of the Authority by purchase, condemnation, lease or otherwise, real property and rights or easements therein; deemed by it necessary or desirable for its purposes, and to use such property; (7) to acquire any such real property by the exercise of the power of condemnation in the manner provided by law; (8) to charge and collect fees, fares, and tolls for use of said bridge and other services made available in connection with the said bridge, subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided; (9) to make contracts with the United States, the state of New Hampshire, the state of Maine, public corporations or bodies existing therein, and private corporations and individuals; (10) to accept grants and the cooperation of the United States or any agency thereof in the construction, maintenance, reconstruction, operation and financing of the bridge and its highway approaches and to do any and all things necessary in order to avail itself of such aid and cooperation; (11) to employ such assistants, agents and servants as it shall deem necessary or desirable for its purposes; (12) to exercise any of its powers in the public domain of the United States unless the exercise of such powers is not permitted by the laws of the United States; (13)

to borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the Authority and to secure the payment of such obligation or any part thereof by pledge of any part of the revenue of the bridge and (14) to do all other lawful things necessary and incidental to the foregoing powers. All property of the Authority and all property held in the name of the state pursuant to the provisions hereof shall be exempt from levy and sale by virtue of any execution and no execution or other judicial process shall be a lien upon its property held pursuant to the provisions hereof.

**Sec. 7. Bonds authorized.** The Authority is hereby authorized to provide by resolution from time to time for the issuance of bonds for the purpose of paying the costs of such bridge and its highway approaches and the location and equipment thereof. The bonds of the Authority shall not constitute a debt of the state or of any agency or political subdivision thereof, but shall be payable solely from the revenue of the bridge. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to this act shall be fully negotiable. In case any of the members of the Authority whose signatures appear on the bonds or coupons shall cease to be such members before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such members had remained in office until such delivery. The Authority may in the resolution authorizing prospective issues provide as to such bonds; (1) the manner of executing the bonds and coupons; (2) the form and denomination thereof; (3) maturity dates not more than fifty years from the date or dates of issuance; (4) the interest rates thereon; (5) for redemption prior to maturity and the premium payable therefor; (6) the place or places for the payment of interest and principal; (7) for registration if the Authority deems such to be desirable; (8) for the pledge of all or any of the revenue for securing payment; (9) for the replacement of lost, destroyed or mutilated bonds; (10) the setting aside of reserve and sinking funds and the regulation and disposition thereof; (11) for limitation on the issuance of additional bonds; (12) for the procedure, if any, by which the contract with the bondholder may be abrogated or amended; (13) for the manner of sale and purchase thereof; (14) for covenants against pledging of any of the revenue of the project; (15) for covenants fixing and establishing such prices, rates and charges for the use of said bridge and other services made available in connection with such bridge, so as to provide, at all times, funds which will be sufficient (a) to pay all costs of operation and maintenance of such bridge and its highway approaches together with the necessary repairs thereto; (b) to

meet and pay the principal and interest of all of such bonds as they severally become due and payable and (c) for the creating of such revenues for the principal and interest of all such bonds and for the meeting of contingencies and the operation and maintenance of such bridge and its highway approaches, as the Authority shall determine; (16) for such other covenants as to such prices, rates and charges as the Authority shall determine; (17) for covenants as to the rights, liabilities, powers and duties arising upon the breach by the Authority of any covenant, condition or obligation; (18) for covenants as to the bonds to be issued and as to the issuance of said bonds in escrow and otherwise and as to the use and disposition of the proceeds thereof; (19) for covenants as to the use of its property and the maintenance and replacement thereof and the insurance to be carried thereon and the use and disposition of the insurance money; (20) for limitations upon the exercise of the powers conveyed upon the Authority by this act; (21) for the issuance of such bonds in series thereof and, (22) the performance by the Authority of any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or in the absolute discretion of the Authority as will tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated therein.

**Sec. 8. Limitations of bondholders.** In the event that the Authority shall make default in the payment of principal or interest on any of the bonds after the same shall fall due and such default shall continue for a period of 60 days, or default in any agreement with the bondholders, the holders of 25% in aggregate principal amount of the bonds then outstanding by instrument filed in the office of the secretary of state duly acknowledged, may appoint a trustee to represent the bondholders for the purpose herein provided. Such trustee may, upon the written request of the holders of 25% in principal amount of the bonds then outstanding. (1) by mandamus or other suit, action or proceeding at law or in equity enforce the rights of the bondholders; (2) bring suit upon the bonds; (3) enjoin any acts or other things which may be unlawful or in violation of the rights of the bondholders; (4) by notice in writing to the Authority declare all bonds due and payable and if all defaults shall be made good, to annul such declaration and its consequences; (5) by action or suit in equity require the Authority to account as if it were trustee of an expressed trust for the stockholders. Such trustee shall be entitled as a right to the appointment of a receiver who may to the extent that the Authority could itself do, enter and take possession of the facilities of the Authority or any part thereof, the revenue or receipts from which are or may be

applicable to the payment of the bonds so in default, and operate and maintain the same and collect and receive all revenue thereafter arising therefrom in the same manner as the Authority might do, and shall deposit all such monies in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and the receiver, if any; and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived by the Authority, the revenues and receipts from which are or may be applicable to the payment of the bonds so in default. Such trustee shall in addition to the foregoing have and possess all the powers necessary and appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights. In addition to other rights and limitations, any bondholder shall have the right by mandamus or other suit, action or proceeding in law or in equity to enforce his rights against the Authority, including the right to require the Authority to carry out any agreement or covenant and to perform its duties under this act.

**Sec. 9. Interim certificates.** Prior to the issuance of the bonds hereunder the Authority may issue interim certificates in such manner and with such conditions as the Authority may determine to be exchanged for such bonds when issued.

**Sec. 10. Revenue.** Subject to any agreement with the bondholder, all revenue received from the operation of said bridge after deducting the expenses of operation and maintenance, the expenses of the Authority, and the sums necessary to provide for the payment of the principal and the interest on the bonds of the Authority in accordance with the provision thereof shall be held and invested by the Authority to establish trust funds for purpose of maintaining and operating said bridge and approaches thereto so that said bridge shall not be a charge upon either state or the United States.

**Sec. 11. Interim expenses.** All expenses incurred by the Authority in the interim between the execution of the compact or agreement and the date money received from grants, bonds or revenue, whichever shall be first, shall be available, shall be a charge upon the highway funds in an amount not exceeding \$2500.

**Sec. 12. Federal permit.** No sum shall be expended by the Authority unless and until the Authority shall have received a license or permit

satisfactory to the Authority from the United States government to construct, operate and maintain said bridge and its highway approaches in, on and over the Piscataqua river. Said license shall be for a period of not less than 20 years. The Authority shall have power to secure an extension or renewal of such license or permit. Provided, however, that the failure of the Authority to receive a renewal of its permit complying with the requirements of this act shall not in any way effect the validity of any bonds of the Authority or the security therefor.

**Sec. 13. Agreement of the state.** The state of Maine does pledge to and agree with the holders of the bonds issued by the Authority that the state will not limit or alter the rights hereby vested in the Authority to establish and collect such charges and tolls as may be convenient or necessary to produce sufficient revenue to meet the expenses of the maintenance and operation of the bridge and its highway approaches and to fulfill the terms of any agreements made with the holders of the bonds issued by the Authority or in any way impair the rights or remedies of the holders of such bonds until such bonds, together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any actions or proceedings by or in behalf of the bondholders are fully made and discharged.

**Sec. 14. Limitations.** No person, partnership, association or corporation, private or public, and no political subdivision of the state shall be authorized, and it shall be unlawful for them to construct or operate, and the state of Maine hereby agrees that it will not construct or operate any bridge for purposes similar to those contemplated hereby which will be competitive with the bridge to be erected pursuant to this act, until the bonds issued by the Authority together with the interest thereon with interest on any unpaid installments of interest, and all cost and expenses in connection with any action or proceedings by or on behalf of the holders of such bonds are fully met and discharged.

Provided, however, that nothing herein contained shall act as a limitation upon, or impairment of, the right to operate, reconstruct or repair the existing Memorial bridge located between Portsmouth and Kittery or to construct a new structure to replace said bridge; and provided further that, in the event it becomes necessary to reconstruct said Memorial bridge or construct a new bridge at or near its present location, the provisions of this act shall not prohibit the state of Maine, or any agency thereof, or any authority or corporation now or hereafter created by the state, or any other public or private corporation from operating such new or reconstructed bridge either as a toll or free bridge.

**Sec. 15. Separability clause.** If any provision of this act or the application thereof to any person or circumstance, is held invalid the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

**Sec. 16. Declaration of purpose.** It is hereby declared that the purposes of this act are public and that the Authority shall be regarded as performing a governmental function in the carrying out of the provisions of this act.

**Sec. 17. Penalties.** Any violation of published rules and regulations relating to the bridge, its use or services or any failure or neglect to pay tolls, fares or charges, for use of the bridge or other services, made available in connection with said bridge shall be deemed a misdemeanor and shall be punishable by a fine not exceeding \$10 providing, however, that nothing herein contained shall prevent the Authority from collecting payment for use of the bridge or any other service by action at law or in equity.

**Emergency clause.** In view of the emergency set forth in the preamble, this act shall take effect when approved.