

# MAINE STATE LEGISLATURE

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

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**Legislative Document**

**No. 453**

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S. P. 263

In Senate, Feb. 7, 1939.

Referred to Committee on Legal Affairs. Sent down for concurrence and 1500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

Presented by Sen. Beckett of Washington.

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## S T A T E   O F   M A I N E

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
THIRTY-NINE

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### **AN ACT Creating the Passamaquoddy District Authority.**

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

**Sec. 1. Incorporation.** There is hereby created a body corporate and politic to be known as the Passamaquoddy District Authority (hereinafter called the authority), which shall have the powers and duties as set forth in this act, with a principal office at the city of Eastport, county of Washington, state of Maine, and such branch offices in the state of Maine as the directors may determine.

**Sec. 2. Cities, towns and plantations included.** The Passamaquoddy District (hereinafter called the District), shall comprise and include the following cities, towns, and plantations in the county of Washington: Roque Bluff, Whitneyville, East Machias, Cutler, Whiting, Lubec, Trescott, Marion, Edmunds, 14 E. D., Pembroke, Cooper, Alexander, Perry, Eastport, Robbinston, Charlotte, Calais, Baring, Meddybemps, Baileyville, and Princeton.

**Sec. 3. Board of directors.** The Authority shall consist of a board of directors nominated by the governor, and, with the advice and consent of the council, appointed by him, one of whom, to be designated by the governor, shall be chairman. Each director shall serve for a term of 5 years

and until his successor has been elected and qualified, except that the initial terms of the directors shall be respectively: 1, 2, 3, 4, and 5 years. The initial term of the chairman shall be 5 years and the board of directors shall determine by lot the initial terms of the other directors. At the expiration of the term of each director and of each succeeding director the governor shall nominate, and, with the advice and consent of the council, appoint a successor who shall hold office for a term of 5 years or until his successor has been elected and qualified. In the event of a vacancy occurring in the office of director by death, resignation or otherwise, the governor shall nominate, and, with the advice and consent of the council, appoint his successor who shall hold office for the unexpired term. No director shall receive a salary for his services as director until the financial condition of the Authority is such as to warrant, but each director shall be paid his actual expenses in the performance of his duties hereunder. Members of the board of directors may be removed by impeachment for misdemeanor in office.

**Sec. 4. Powers.** The Authority shall have power:

- (a) To have perpetual succession as a corporation;
- (b) To sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity;
- (c) To adopt, use and alter at will a corporate seal;
- (d) To make by-laws for the management and regulation of its affairs;
- (e) To appoint officers, agents, employees and servants, to prescribe their duties, and to fix their compensation;
- (f) To acquire, purchase, hold, lease, mortgage, sell, transfer and dispose of any property, real, personal, or mixed, tangible or intangible, or any interest therein;
- (g) Within the District to build, acquire, by purchase or otherwise, construct, operate, and maintain power houses, hydro-electric and other plants, and any and all structures, ways and means necessary, useful or customarily used and employed in the manufacture, production, and generation of power, including, but without limitation, water power, steam electric power, hydro-electric power, tidal electric power, and any and all other kinds of power;
- (h) Within the District, to build, construct, maintain, and operate canals, dams, locks, aqueducts, reservoirs, drawspans, ditches, drains and roads, and to lay and construct any tunnels, pen-stocks, culverts, flumes, conduits, mains and other pipes necessary or useful in connection therewith;

(i) To transmit, distribute, and sell water power, steam electric power, hydro-electric power, tidal electric power, and any and all other kinds of power and to construct, build, maintain, and acquire, by purchase or otherwise, power transmission lines, telephone lines, substations, transformers, conduits, and generally all things used or useful in the distribution, purchase, and sale of power generated by tides, water, steam, or otherwise, beyond the confines of the state of Maine, and within the state of Maine subject to the general law relating electric companies; provided, however, that such transmission, distribution, and sale within the District shall not be subject to the general law relating to electric companies except as provided in section 5 of this act.

(j) To take, hold, divert, use, and distribute water from any lake, stream, surface or underground brook or vein of water within the District, and to take and hold, by purchase or otherwise, any land or interest therein, or water rights necessary for erecting and maintaining dams for flowage, for reservoirs, for preserving the purity of the water and water sheds, for laying and maintaining aqueducts and other structures, for taking and distributing and discharging, for rights of way or roadways, to its sources of supply, dams, stations, reservoirs, mains, aqueducts, structures, and lines; and to erect and maintain all dams, reservoirs, and structures necessary and convenient for the purpose of supplying pure water within the District for domestic, sanitary, commercial, industrial, and municipal purposes; and to lay in and through the streets, roadways, and highways of the District, and across private lands therein, and to maintain, repair, and replace such pipes, aqueducts, and fixtures as may be necessary and convenient; provided, however, that it shall cause the same to be done with as little obstruction as practicable to the public travel, and shall at its own expense, without unnecessary delay, cause the earth and pavement removed by it to be replaced in proper condition; and to contract with persons and corporations, and towns included in the District, and the said towns are hereby authorized to contract with it for the supply of water for municipal and other purposes, and to acquire by purchase or by the exercise of the right of eminent domain as provided in section 4 (m) hereof, which right is hereby expressly delegated to the Authority for such purposes, the entire plants, properties, franchises, rights, and privileges, except cash assets and accounts receivable, owned by any water company situate in the District, including all lands, waters, water rights, dam structures, reservoirs, pipes, machinery, fixtures, hydrants, tools, and all apparatus and appliances used or useful in supplying water in the District, or any part thereof; provided that the water shall not be sold or distributed for other than industrial uses and consumption, except in accordance with section 5 hereof.

(k) Within the District to take, hold, or acquire, by purchase or otherwise, real property, rights and easements, as the Authority may from time to time consider necessary for the purpose of constructing or securing construction or utilization of piers, and in connection therewith, highways, waterways, railroad connections, storage yards, and sites for warehouses and industrial establishments, and may lay out and build thereon, such piers, buildings, appurtenances, docks, highways, waterways, railroad connections, storage yards, and public warehouses as in the opinion of the board of directors may be desirable; and all piers and other similar structures built by the Authority shall be equipped either by the directors, or by the lessees thereof, with suitable sheds, railway tracks, cranes, or other machinery and accommodations for the convenient, economical, and speedy loading and discharge of freight, and the directors may acquire, hold, and operate such lighters and other vessels as may be convenient, and in the opinion of the directors, needed for that purpose; and to lease for a period not exceeding 20 years, under such covenants and conditions as they may prescribe, storage facilities, wharves, piers, bulkheads, docks, sheds, warehouses, and industrial locations within their charge; provided, however, that this act shall not limit or effect in any way the Authority conferred by law upon the Port of Calais Authority, or of any other legally constituted port authority within the District, but the several towns and the Port of Calais Authority are hereby authorized to grant to the Authority any property, rights, or privileges which may be reasonable, necessary or desirable for carrying out the purposes of the Authority, and upon such consideration as may be mutually agreed between them.

(l) To lay out and construct all manner of public improvements, including, but without limitation, public assembly halls for business or recreation, exhibition halls or museums, parks, playgrounds, athletic fields and buildings, swimming pools, and other recreational facilities, public garages and parking areas, and other similar improvements, and for that purpose, to purchase lands, hold, own, manage, control, sell, mortgage, lease or let land, buildings, real estate, and rights in real estate, and all manner of personal property, and to accept gifts thereof, in trust or otherwise, provided, however, that the power of eminent domain shall not be exercised in the acquisition of any land or interest therein for the purposes above set out in this subsection.

(m) To have the power of eminent domain, which shall be exercised, however, in accordance with the provisions of sections 12 to 22, inclusive, of chapter 69 of the revised statutes, or as the same may be amended, and

provided further that in the taking of the plant, property, and franchise of any existing electric company or water company as defined in section 15 of chapter 62 of the revised statutes, the right of eminent domain herein conferred shall be exercised in the manner hereinafter provided, that is to say: The Authority shall file a petition to take for public uses, the plant, property, and franchise of such water or electric company in the clerk's office of the supreme judicial court for the county of Washington, in term time or in vacation, addressed to any justice of said court, who, after due notice to said company, its mortgagees, trustees, lessees and other parties in interest of record, shall, after hearing and within thirty days after the filing of said petition, appoint 3 disinterested appraisers, none of whom shall be residents of Washington county, for the purpose of fixing a valuation of the plant, property and franchises. At the hearing aforesaid, such justice, upon motion of the petitioner, may order the production and filing in court, for the inspection of the petitioner, of all books and papers pertinent to the issue and necessary for a full understanding of the matter to be heard by said appraisers, the terms and conditions of so producing and filing such books and papers to be determined by the justice in his order therefor and to be enforced from time to time as any justice of supreme judicial court, in court time or in vacation, upon motion of either party, may deem reasonable and proper in the premises. At such hearing, such justice upon motion of the petitioner, may fix a time at which the company shall file in the clerk's office of the supreme judicial court for the county of Washington for the inspection of the petitioner, so far as they relate to the service furnished in the District, the following: 1st, schedules showing the names, residences and types of service of all its customers on the day the petition was filed or such other date as the court may determine, with the rate charged therefore; 2nd, copies of all contracts in force on such day as determined; 3rd, an itemized statement of the gross income earned during its last complete fiscal year and up to said day, and all operating expenses and fixed charges, paid or incurred during such period and properly chargeable thereto; 4th, a memorandum of all real estate, rights or interest therein, owned or controlled on said day, with such brief description thereof as will reasonably identify the same; 5th, for a water company, brief descriptions, specifications and plans of all reservoirs, mains, pipes, service pipes, hydrants, gates, gate boxes, fixtures and machinery and all the physical elements in such water system, giving in detail quantities, sizes, lengths, and specifying the streets, roads or ways where situated; and for an electric company, a description of all dams, reservoirs, powerhouses, transmission lines, sub-stations, transformers, poles, conduits, meters, and other equipment used in the generation, transmission and distribution of

electricity within the District by the company; 6th, an itemized list of all tools, apparatus, appliances and supplies used or usable in supplying water or electricity on such day as determined. Such orders may be enforced from time to time by any justice of said supreme judicial court, in term time or in vacation, upon motion of either party, as such justice may deem reasonable and proper in the premises. At such hearing the justice then sitting may, upon motion of the petitioner, make all such decrees as he deems reasonable and proper to enable the petitioner, through its servants and employees, to ascertain the true conditions of the plant and equipment of the said company, in the presence of the officers or agents of such water or electric company, the entire expense thereof to be borne by the Authority. The said appraisers shall have the power of compelling attendance of witnesses and the production of all books, accounts and papers pertinent to the issue and necessary for a full understanding by them of the matter in question and may administer oaths; and any witness or person in charge of such books, accounts and papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the supreme judicial court. Depositions may be taken as in civil actions. The appraisers so appointed shall, after notice and hearing, fix the valuation of said plant, property and franchises at what they are fairly and equitably worth, so that said company shall receive just compensation for all and the same. The said day of filing the petition or such other day as the court may determine shall be the date as of which the valuation aforesaid shall be fixed, from which date interest on said award shall run, and all rents and profits accruing thereafter shall belong to the Authority. The report of said appraisers, or a majority of them, shall be filed in said clerk's office, in term time or in vacation, as soon as may be after their appointment, and such single justice, or, in case of his inability to act, any justice of said court appointed by the chief justice, may, after notice and hearing, confirm or reject the same, or recommit it if justice so requires. Before a commission is issued to said appraisers either party may ask for instructions to said appraisers, and all question of law arising upon said requests for instructions, or upon any other matters in issue, may be reported to the law court for determination before the appraisers proceed to fix the valuation of the property, plant and franchises of said company. Upon the confirmation of said report the court so sitting shall thereupon, after hearing, make final decree upon the entire matter, including the application of the purchase money and transfer of property, jurisdiction over which is hereby conferred, and with the power to enforce said decree as in equity cases. All findings of fact by said court shall be final, but any party aggrieved may take exceptions as to

any ruling of law so made, the same to be accompanied by so much of the case as may be necessary to a clear understanding of the question raised thereby. Such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed and notice thereof has been given to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing and entry of said decree and there heard unless otherwise agreed; or the law court for good cause shall order further time for hearing thereon. Before said plant, property, and franchises are transferred in accordance with such final decree and before payment therefor, as hereinbefore provided such justice shall, upon motion of either party, after notice and hearing take account of all receipts and expenditures, properly had or incurred by the company in respect of the territory comprising the District, or part thereof, belonging to this period from and after the day determined and all net rents and profits accruing thereafter, and shall order the net balance to be added to or deducted from the amount to be paid under such final decree, as the case may be. All findings of law and fact by such justice at such hearing shall be final. On payment or tender by the Authority of the amount so determined and the performance of all the other terms and conditions so imposed by said court, the entire plant, property and franchises of the company used and usable in supplying water or electricity in the District shall become vested in the Authority. Either party may file and prosecute motions and petitions relating to the premises at any state of the proceedings, and the proceedings shall not be discontinued except upon consent of both parties. All valid contracts existing between the company and any persons or corporations for supplying water or electricity in the District shall be assumed and carried out by the Authority.

No provision of this section should be construed to relieve such electric or water company of any obligation to furnish its services to the public as may be required by law nor to divest the public utilities commission of any of its jurisdiction of such electric or water company, and to assure the uninterrupted continuation of the services furnished by such electric or water company, the justice making the final decree may provide for the transfer of the company's plant and equipment in such manner as he may deem convenient or necessary to provide uninterrupted service to the public.

(n) The Authority is authorized and empowered to enter into contracts with public or private electric power systems for the mutual exchange of unused excess power upon suitable exchange terms for the purpose of economical operation and of providing emergency or break-down relief.



(o) To fix, alter, charge and collect rates and other charges for the use of other facilities of, or for the services rendered by, or for any commodities furnished by, the Authority, at rates to be determined by it, for the purpose of providing for the payment of all expenses of the Authority, conservation and operative maintenance of its facilities and properties, the payment of principal and interest on its notes, bonds, and other evidences of indebtedness or obligations, and to fulfill the terms and conditions of any agreements made with the purchasers or holders of any such notes, bonds, or other evidences of indebtedness or obligations; provided, however, that it shall not make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or any undue or unreasonable prejudice or disadvantage in any respect whatever.

(p) To borrow money, make and issue negotiable notes, bonds, and other evidences of indebtedness or obligations (herein called "obligations") of the Authority, and to secure the payment of such obligations or any part thereof by mortgage, lien, pledge or deed of trust, on all or any of its property, contracts, franchises or revenues, and to make such agreements with the purchasers or holders of such obligations, or with others in connection with any such obligations, whether issued or to be issued, as the Authority shall deem advisable, and in general to provide for the security for said obligations and the rights of the holders thereof;

(q) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(r) Without limitation of the foregoing to borrow money and accept grants from and to enter into contracts, leases or other transactions with the United States Government or any corporation or agency created, designated or established by the United States.

(s) To mortgage, pledge, hypothecate or otherwise encumber all or any of the property, real, personal or mixed, or facilities, or revenues of the Authority as security for all or any of the obligations of the Authority;

(t) To do all acts and things necessary or convenient to carry out the powers granted to it by this act or any other acts; provided, however, that the Authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any of its political subdivisions, nor, shall any of its obligations be deemed to be obligations of the state or of any of its political subdivisions; nor shall the state be liable for the payment of principal or interest on such obligations. The Authority shall have power and is hereby authorized from time to time to issue its negotiable obligations and to secure the payment of the same by mortgage,

lien, pledge or deed of trust, on or of all or any of its property, contracts, franchises or revenues. Said obligations shall be authorized by resolution of the board of directors and shall bear such date or dates, be in such forms, and contain such provisions, as the board of directors may determine. Any resolution or resolutions authorizing any notes, bonds, or other evidences of indebtedness may contain provisions, which shall be part of the contract with the holders thereof, as to (i) pledging the full faith and credit of the Authority (but not of the state of Maine or any political subdivision thereof) for such obligations, or restricting the same to all or any of the revenues of the Authority from all or any of its properties, (ii) the rates of tolls and other charges for use of the facilities of or for the services rendered by, or for the commodities furnished by the Authority, (iii) the setting aside of reserves or sinking funds and the regulation and disposition thereof, (iv) reserving the right to redeem the notes, bonds, or other evidences of indebtedness at such prices, not exceeding one hundred five per cent of the principal amount thereof and accrued interest, as may be provided, (v) limitations on the issuances of additional bonds, (vi) the terms and provisions of any mortgage or deed of trust securing the bonds or under which the same may be issued, and (vii) any other or additional agreements with the holders of such notes, bonds or other evidences of indebtedness.

The Authority may enter into any mortgages, deeds of trust or other agreements with any bank or trust company or other person or persons in the United States having power to enter into the same, including the United States Government or any agency or creature thereof, as security for such obligations, and may transfer, convey, mortgage or pledge all or any of the property contracts, franchises, or revenues of the Authority thereunder. Such mortgage, deed of trust or other agreement may contain such provisions as may be customary in such instruments or as the Authority may authorize, including, but without limitation, provisions as to (a) the construction, operation, maintenance and repair of the properties or facilities of the Authority, (b) the application of funds and the safeguarding of funds on hand or on deposit, (c) the rights and remedies of said trustee and the holders of the bonds, (d) possession of the mortgaged properties, and (e) the terms and provisions of the obligations, and may also provide for a franchise for operation of the property and business of the Authority, or any part thereof, to any person, firm or corporation, including the United States Government, or any agency thereof, acquiring the mortgaged property or any part thereof upon foreclosure for a period of not to exceed 20 years from the date of such acquisition. The powers herein conferred upon the board of directors shall

n<sup>o</sup>t be construed to give the board of directors the power to sell, except by way of mortgage or deed of trust, all of the physical property of the Authority, but the board of directors may sell any surplus property which it may acquire and which said board of directors shall deem not to be necessary for the purpose of the development.

**Sec. 5. Distribution of electric power and water.** No electric power or water shall be distributed and sold by the Authority for other than industrial uses or consumption in any city, town, or plantation within the district, which is supplied or furnished with electric power or water by an existing electric company, water company, water district established by law, or municipal electric and/or water plant until the Public Utilities Commission of the state of Maine has made a declaration after a public hearing of all the parties interested that the public convenience and necessity require the sale and distribution by the Authority of water and/or power for such uses but this provision shall not limit in any way the power of the Authority to acquire, by purchase or otherwise, the plant, property, and franchises of any water or electric company furnishing such service in the District, nor limit in any way the sale and distribution of electric or other power for industrial uses. For the purposes of this section "industrial uses" of electric power shall mean and include users with a demand in excess of 100 KW.

**Sec. 6. Employees; rules and regulations.** In furtherance of the powers herein granted, and to provide for the protection of its property and equipment, the Authority may appoint and employ guards, watchmen, and police, and such other employees as it may from time to time find necessary, and make rules and regulations for the government and use of the property under its care, and the police appointed or employed by the Authority shall have, within the District, all the powers of police officers and constables of the cities and towns of the District except the power of serving and executing civil processes, and when on duty may carry such weapons as the Authority may authorize.

**Sec. 7. Board of directors.** The powers of the Authority shall be exercised by the board of directors. Three directors shall constitute a quorum of the board for the purpose of organizing the Authority and conducting the business thereof and for all other purposes and all action may be taken by vote of a majority of directors present unless in any case the by-laws shall require a larger number. The board of directors shall have full authority to manage the property and business of the Authority, and to prescribe, amend and repeal by-laws, rules and regula-

tions governing the manner in which the general business of the Authority may be conducted and the powers granted to it may be exercised and embodied. The board of directors shall fix and determine the number of officers, agents, employees and servants of the Authority and their respective compensation and duties, and may delegate to one or more of their number, or to one or more of said officers, agents, employees or servants, such powers and duties as it may deem proper. Each director shall give bond for the faithful performance of his duties as such director in the penal sum of at least \$5000, the premium for the first bonds to be paid by the Authority. The board of directors shall require similar bonds in such amounts as they may determine from any or all officers, agents and employees in a position of responsibility or trust.

**Sec. 8. Restrictions.** The use of the facilities of the Authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the Authority; provided, however, that the Authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the Authority or violate any agreements with them for their benefit.

**Sec. 9. Contracts.** The Authority may (but without intending by this provision to limit any powers of the Authority) enter into and carry out such contracts, or establish or comply with such rules and regulations, concerning labor and materials and other related matters in connection with any project or projects as the Authority may deem desirable or as may be requested by the United States of America, or any corporation or agency created, designated or established thereby, which may assist in the financing of any such project or projects.

**Sec. 10. Credit of state not to be involved.** Nothing contained in the provisions of the act shall, at any time or in any manner, involve the credit and taxing power of the state of Maine, or of any of its political subdivisions; nor shall any of the obligations authorized to be issued in and by this act ever be or constitute obligations of the state of Maine or of any of its political subdivisions; nor shall the state of Maine or any of its political subdivisions ever be liable or responsible, in any way for the payment of the principal or interest of or on such obligations.

**Sec. 11. Exemption from taxation.** (a) The property of the Authority is declared to be public property used for essential public purposes, and such property and the Authority shall be exempt from all taxes and special assessments by the state or by any city, county or political subdivision of the state; provided, however, that in lieu of such taxes or special assess-

ments the Authority may agree to make payments to a city, county or any such political subdivision of the state for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of the Authority, but in no event shall such payments exceed the estimated cost to such city, county or political subdivision of the improvements, services or facilities to be furnished. This exemption shall not be abridged by any special act, nor shall the state of Maine limit in any way the powers and rights herein conferred unless and until the obligations, as hereinbefore defined, of the Authority, with interest, are fully met and discharged.

(b) The obligations, as hereinbefore defined, of the Authority are declared to be issued for an essential public purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxation.

**Sec. 12. Execution not to issue.** All real property shall be exempt from levy and sale by virtue of any execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage given by the Authority or the right of the obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues.

**Sec. 13. Validity.** If any term or provision of this act shall be declared unconstitutional or invalid in whole or in part by a court of competent jurisdiction, then to the extent that it is not unconstitutional or invalid such term or provision shall be enforced and effectuated, and such determination shall not be deemed to invalidate the remaining terms or provisions hereof.