

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

Legislative Document

No. 1126

S. P. 626

In Senate, April 1, 1939.

Reported by Senator Marden of Kennebec from Committee on Legal Affairs and laid on table to be printed under joint rules.

ROYDEN V. BROWN, Secretary.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Creating the Port Authority of Mount Desert.

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

Sec. 1. Incorporation. Subject to the provisions of section 13 hereof the inhabitants of the territory within the town of Mount Desert, are hereby created a body politic and corporate under the name of "The Port Authority of Mount Desert" for the purpose of improving harbor and port facilities, providing public or common landings, public parks, playgrounds and recreational centers, all for the benefit of said inhabitants and with the following powers, rights and privileges to be exercised as the same shall be necessary and desirable for the authority and for the general benefit of the public and of the inhabitants of said authority:

1. To acquire by purchase or otherwise real and personal property including littoral rights, privileges, easements, rights of ways and facilities.
2. To reclaim lands by drainage and/or fill including lands and areas over which tide waters ebb and flow which said reclaimed lands shall be the property of the authority except as hereinafter provided.
3. To construct and maintain bulkheads, bridges, wharves, piers, docks, marine railways, waterways, public landings, highways, power and yacht storage facilities, service stations of all kinds, buildings and appurtenances thereto,

together with the following powers, rights and privileges as incidental to the foregoing to be exercised when the same shall be deemed necessary and desirable for the benefit of the general public and said port authority:

1. To let, rent, lease and extend rights and privileges in buildings, wharves, piers, docks and land so acquired.
2. To let privileges and concessions upon its property.
3. To do any and all things necessary, or appurtenant and incidental to any of the foregoing.

Sec. 2. How managed. All the affairs of said authority as are herein provided shall be managed by a board of trustees, composed of 3 members, who shall be either residents or real property owners within the authority and who shall be elected and have the duties, powers and privileges as are hereinafter provided.

Sec. 3. Board of trustees; how elected; terms. The trustees so to be elected, shall be elected, subject to the acceptance of this act, by a plurality vote of the legal voters of said authority at the election provided for in section 13 hereafter, and legal voters of said authority shall be deemed to be persons qualified to vote at the municipal elections in the territory embraced by the authority. All nominations of candidates so to be voted for shall be made by nomination papers signed in the aggregate for each candidate by no less than 50 qualified voters resident in said authority. Each voter signing a nomination paper shall make his signature in person, and each voter may subscribe to as many nominations as there are trustees to be elected in said authority and no more. Such nomination papers, before being filed shall be submitted to the town clerk of the town of Mount Desert, who shall forthwith certify thereon what number of the signatures are names of qualified voters resident in said authority; one of the signers to each such separate paper shall swear to the truth thereof, and the certificate of such oath shall be annexed to or made upon the nomination papers. Such nomination papers shall be filed with the town clerk of the said town of Mount Desert at least 7 days, exclusive of Sundays previous to the day of such election. With such nomination papers shall also be filed the consent in writing of the person or persons nominated. All nomination papers being filed and being in apparent conformity with the foregoing provisions, shall be deemed to be valid, and if not in apparent conformity they may be seasonably amended under oath. In case any candidate who has been duly nominated under the provisions hereof shall die before the day of election or shall withdraw in writing, or, not owning real property within said authority, shall remove his place of resi-

dence from said authority, or, not residing within said authority, shall cease to own real property within said authority, the vacancy may be supplied in the manner herein provided for such nominations. The name so supplied for the vacancy shall, if the ballots have not been printed, be placed on the ballots instead of the original nomination; or if the ballots have been printed, new ballots containing the new nomination, shall, if practicable, be furnished, or slips containing the new nomination shall be printed under the direction of the town clerk, which shall be pasted upon the ballots and over the name of the candidate whose nomination has been vacated as aforesaid, and thereafter shall become part of said ballots as if originally printed thereon. The ballot in said authority shall contain the names of all candidates so nominated in such authority alphabetically arranged, printed in one column under the heading, "For Trustees of the Port Authority of Mount Desert." Above such heading shall be printed, Vote for Three. Make a cross to the right of each name voted for." As many blank spaces shall be left below the names of the candidates as there are trustees to be elected, in which the voter may by writing insert the name of any person or persons for whom he desires to vote. In preparing his ballot the voter shall mark a cross (x) against and to the right of such name on said ballot as he desires to vote for, not to exceed the number of trustees so to be elected in said authority. If the voter shall desire to vote for any person or persons whose name or names are not printed on the ballot he may fill in such name or names in the blank spaces left therefor by writing the same therein, or by using a sticker containing such new name or names. Where the voter so adds by writing or by sticker such name or names, his vote for such new name or names shall be counted therefor although he may fail to mark a cross against the same. The result of such election shall be declared by the municipal officers of the town of Mount Desert and due certificate thereof filed with the town clerk thereof, and the municipal officers and election officers of the town of Mount Desert shall, for the purposes of elections under this act, be deemed to be the election officers of the authority.

The term of the trustees shall begin on the date they are elected as provided in this act. As soon as convenient after all the members of said board have been so chosen, the trustees shall hold a meeting at the town rooms in the town of Mount Desert, to be called by 1 of the trustees upon such reasonable notice therefor as he may deem proper. They shall organize by the election from their own membership of a chairman, secretary, and treasurer, adopt a corporate seal and may employ all needful officers and agents for the proper conduct and management of the affairs of the authority and annually thereafter after each election as herein provided for.

At the first meeting the trustees so elected shall determine by lot the term of office of each trustee so that one trustee shall retire each year and the term of office of the first trustee to expire shall end at the time of the annual town meeting of the town of Mount Desert following the acceptance of this act, and thereafter the term of office of a trustee shall expire and his successor shall be elected by a plurality vote of the voters of said authority voting upon the date of the annual election of said town and upon nomination made as herein provided for the first election of trustees. The successor trustees so elected shall serve the full term of 3 years, and in case any vacancy arises in the membership of the board of trustees it shall be filled by vote of the remaining trustees who shall elect a member to complete the unexpired term. Trustees shall be eligible for re-election. When any trustee not owning real property within said authority ceases to be a resident of said authority, or, any trustee not residing within said authority shall cease to own real property within said authority, he vacates the office of the trustee, and the vacancy shall be filled as aforesaid. No trustee shall receive compensation for his services, or be a party to and financially interested in, any contract entered into with or by said authority. The board of trustees shall appoint such officers and agents as they may deem necessary for the proper management of the affairs of the authority and fix their compensation, and may promulgate and establish a code of by-laws and all necessary rules and regulations for the effective administration of the affairs of the authority, and all the expenses of the authority as approved by the trustees shall be paid from the funds of the authority. At the close of each calendar year the trustees shall make a detailed report of their doings of the financial condition of said authority, and also such other matters and things pertaining to said authority as shall show the inhabitants thereof how said trustees are fulfilling the duties and obligations of their trust, said reports to be made, attested to and filed with the municipal officers of said town.

Sec. 4. Right of eminent domain conferred. The said authority shall have the right to take any property, including shore and littoral rights and privileges, by right of eminent domain for purposes of this authority. Said trustees shall, within 90 days after voting to take any lands, easements, or shore and littoral rights and privileges, file and cause to be recorded in the registry of deeds for the county of Hancock, a plan and description thereof sufficiently accurate for identification, with a statement of the purposes for which the same is to be taken, signed by a majority of said trustees, and within 30 days thereafter shall publish notice of such taking and filing in some newspaper published in said county, such publication to be continued for 3 weeks successively. Said recording shall

operate as a taking of any real estate and of the rights and easements, including shore and littoral rights and privileges therein, and said authority, by a majority of its trustees, shall first have the right to enter in and upon any lands or real estate, including said shore and littoral areas, to make necessary surveys and location preliminary to such returns. Should said trustees, or a majority of them, be unable to agree with the land owner upon the damages to be paid for the land, real estate, or shore and littoral rights and privileges so taken, the land owner or the said trustees may, within 3 months after the filing of said plan, petition the county commissioners of said county of Hancock who shall cause such damages to be assessed in the same manner and under the same conditions, limitations, restrictions and rights of appeal as are by law prescribed in cases of damages for the laying out of highways, under the provisions of sections 1 to 8, inclusive, of chapter 27 of the revised statutes of 1930, so far as said law is consistent with the provisions of this act.

The trustees shall pay all damages sustained by any person, firm or corporation by the taking of any land, easements, rights and privileges as herein provided for from the proceeds of bonds issued by the said authority as hereinafter provided for, or from any other funds in the hands of the authority.

Sec. 5. How financed; bond issue authorized. To procure funds for the purpose of this act and such other expenses as may be necessary to the carrying out of said purposes, the said authority is hereby authorized to issue its bonds and notes, as hereinafter provided, but shall not incur a total outstanding indebtedness exceeding the sum of \$100,000. Each bond shall have inscribed upon its face the words: "The Port Authority of Mount Desert" and shall bear interest not exceeding the rate of 6%, payable semi-annually or quarterly. Said bonds may be issued to mature serially or made to run for such periods as said trustees may determine, but none shall run for a longer period than 20 years from the date of the issue. Provided that the authority shall issue its bonds or notes only after approval by a majority vote of the legal listed voters of the authority embraced within the limits of said authority, present and voting, at a meeting to be especially called and held for the purpose. Notice of said meeting, stating the purpose thereof, to be given by the trustees of said authority at least 7 days prior to said meeting by posting said notice in 3 public places within said authority. An attested copy of the call and notice of posting same, together with the doings of said meeting shall be filed with the clerk of the town of Mount Desert. All notes or bonds issued by said authority shall be signed by the treasurer and countersigned by the chairman of said authority, and if coupon bonds be issued, each coupon shall

be attested by a facsimile signature of the chairman and treasurer printed thereon. The treasurer shall give bond to the authority in such sum and with such sureties as said trustees may determine, which bond shall remain in the custody of the chairman. The expense of said bond shall be paid by the authority.

Sec. 6. Provision for revenue. The trustees of the authority shall determine the sum required and to be paid annually for the servicing of the bonds, including interest and retirement thereof, and other necessary expenses of the authority, provided that the amount of the other necessary expenses of the authority, so determined, in any year shall first be authorized by a majority vote of the legal listed voters of the authority, embraced within the limits of said authority, present and voting at a meeting to be especially called and held for the purpose. Notice, call and return of said meeting to be in accordance with the provisions of section 5 providing for the approval of bonds. Said trustees shall, each year, before the 1st day of April issue their warrant in the same form as the warrant of the treasurer of the state for taxes, with proper changes, to the assessors of the town of Mount Desert, requiring them to assess the sum so determined upon the taxable polls and estates within said authority and to commit their assessment to the constable or collector of said town of Mount Desert, whose duty it shall be to collect said taxes and who shall have all authority and power to collect said taxes as is vested in him by law, to collect state, county and municipal taxes. On or before the 31st day of December of the year in which said tax is so levied the treasurer of said town shall pay the amount of the tax, so assessed and collected against the property within said authority to the treasurer of said authority. In the case of the failure on the part of the treasurer of the town to pay said sum, or in the case of his failure to pay any part thereof on or before said 31st day of December of the year in which said tax is so levied, the treasurer of said authority may issue his warrant for the amount of said tax or so much thereof as shall then remain unpaid, to the sheriff of Hancock county, requiring him to levy by distress and sale on real and personal property of any of the inhabitants of said authority, and the sheriff or either or any of his deputies shall execute said warrant except as is otherwise provided herein. The same authority as is vested in county officials for the collection of county taxes, under the provisions of law, is hereby vested in the trustees of said authority in relation to the collection of taxes within said authority.

Sec. 7. Service of bonds and other expenses. The trustees shall redeem said bonds when due and not less than 5% of the total amount of the bonds outstanding each year, beginning not later than 12 months after said bonds

are so issued as aforesaid, so that said bonds shall be retired in no less than 20 annual installments within 20 years from the day of the date of their issue. The trustees are empowered to purchase any of the bonds of the authority upon favorable terms if and when sufficient funds have accumulated and bonds so redeemed or purchased shall be cancelled. The trustees shall determine the amount of money which will be required each year to meet the interest on said bonds as well as the principal thereof and the total sum necessary for interest, principal, maintenance, repairs and construction shall be paid out of the revenue and profits received by said authority. The said authority is hereby authorized and empowered to enter into such agreement with the federal government, or any corporation or board authorized by the federal government, to loan money or otherwise assist in the financing of said projects as this authority is authorized to carry out.

Sec. 8. Sinking fund. The trustees may in their discretion, from time to time, set aside from any surplus funds in their hands, funds for the purpose of the retirement and cancellation by purchase or otherwise of the bonds of the authority. And such purchase or retirement and cancellation of bonds from said fund shall be in addition to the bonds retired and cancelled under section 7 and shall not reduce the amount of bonds heretofore provided for to be retired by taxation except as the same may be sufficient to retire and fully service the entire issue or issues, the bonds first issued being paid first. Such funds so set aside shall not be used for any other purpose.

Sec. 9. Authorized to lease town properties. The said authority is hereby empowered to lease to or from the town of Mount Desert any properties which may be deemed necessary and advantageous for the purposes of said authority and for the general public benefit.

Sec. 10. Trustees may accept deeds and devise in name of said authority. The trustees may accept in behalf of the authority by gift, grant, bequest, or devise, moneys or the equivalent, personal or real property, or rights therein, including shore and littoral rights and privileges within the limitations and subject to the provisions and purposes of this act.

Sec. 11. Saving clause. If any portion of this act shall for any reason be held to be unconstitutional or illegal in purpose and application, such decision shall not affect the validity of the remaining portions thereof.

Sec. 12. Provision for termination of the board of trustees and the authority. At such times as all of the financial obligations of the authority

as to principal and interest charges, shall be paid and retired all the property and powers of the authority shall become the property and powers of the town of Mount Desert upon the acceptance of the same by said town at an annual town meeting, and from that time all the affairs of the authority shall be exercised, managed, maintained, and carried on by said town and the trustees shall be discharged and the port authority terminated.

Sec. 13. Effective date; referendum. This act shall not take effect unless accepted and approved by a majority vote of the legal listed voters of the territory embraced within the limits of said authority, present and voting at an election to be especially called and held for the purpose, and for the purpose of electing trustees as provided for in section 3 on the day of a regular, annual town meeting occurring within the time and territorial limits of this act. Said special election shall be called concurrently with the town meeting and the voting on the acceptance of the act shall be by ballot prepared for the purpose by the town clerk as provided hereunder, and the voting on the said acceptance shall be on the same day and at the same place as the voting for the municipal officers at the regular town meeting of the said town of Mount Desert. Provided, however, that a special meeting of the inhabitants of the proposed authority may be called and held for the purpose of accepting the provisions of this act and for the purpose of electing trustees as provided in section 3 hereof, any time previous to the day of the first regular town meeting occurring within the time limit of this act in the said town of Mount Desert, but however, in the event of such a special meeting called before the first regular town meeting occurring within the time limit of this act, the act shall not be declared accepted unless it is approved by a ballot vote of a majority of the legal listed voters of the territory embraced within the limits of the proposed authority according to the latest revised list of voters present and voting at said special meeting. The special election shall be called, advertised, and conducted according to laws relating to municipal elections, provided however, that the board of registration in said town of Mount Desert shall not be required to prepare for posting or the town clerk to post a new list of voters. The town clerk shall prepare the required ballots upon which he shall reduce the subject matter of this act to the following question: "Shall the act to incorporate the port authority of Mount be accepted," and the voters shall indicate by a cross placed over the words "Yes" or "No" their opinion of the same, and the ballot as prepared shall contain such instructions. The result of said authority election shall be declared by the municipal officers of the town of Mount Desert, and due certificate filed by the town clerk with the secretary of state, and with the municipal officers and the town clerk of the town of Mount Desert.