

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 713**

H. P. 1128

House of Representatives, February 14, 1951

Referred to the Committee on Public Utilities, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Littlefield of Kennebunk.

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-ONE

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**AN ACT to Incorporate the Kennebunk Light and Power District.**

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

**Sec. 1. Incorporation.** The inhabitants of and the territory within the town of Kennebunk are hereby created a body politic and corporate under the name of "Kennebunk Light and Power District," with power and authority to acquire from the inhabitants of the town of Kennebunk the electric light and power system, including lands, owned or leased, water power, dams and reservoirs, manufactories and works for providing and supplying electricity, electric generators and other apparatus equipping and maintaining the electric lighting and power plants now existing, together with all lines of wire or other material, poles, pipes and apparatus for the transmission and distribution of electricity now existing upon, under, along or over any and all streets and roads within the limits of said town of Kennebunk and now owned by the Kennebunk Light Department, and in so much of the towns of Wells, Lyman and North Kennebunkport now owned by said Kennebunk Light Department, and including all electrical distribution apparatus and all rights, privileges and easements, as

the same now exist and have hitherto been enjoyed by said Kennebunk Light Department in said town of Kennebunk and in so much of the towns of Wells, Lyman and North Kennebunkport hitherto served by said Kennebunk Light Department, and together with all offices or places of business, furniture, furnishings, fixtures and books of account and record hitherto used, employed or kept by said Kennebunk Light Department, and together with all funds, savings accounts, bonds and moneys of whatever nature hitherto held by said Kennebunk Light Department or held by said town of Kennebunk for said Kennebunk Light Department and allocated to or constituting a reserve fund for the maintenance, repair, obsolescence and depreciation of the physical assets of said Kennebunk Light Department as hereinabove described; also the power and authority, for the purpose of selling, distributing and furnishing electricity for lighting, heating and power to individuals, partnerships, firms and corporations within the territorial limits of said Kennebunk Light and Power District as defined in this act, to erect, construct or otherwise acquire power plants within said town to be operated by steam, internal combustion engine, water power or otherwise, and to acquire by purchase or otherwise and develop hydraulic power sites and plants for the generation of electrical energy, together with any and all necessary or convenient apparatus for the emergency or standby production of electrical energy by any means other than hydraulic, at any site within said town, or not more than 20 miles distant from the municipal limits of said town of Kennebunk. This section shall not be construed to confer to said district any rights of eminent domain, except those conferred by section 6 of this act.

**Sec. 2. Powers of town under chapter 131 of private & special laws of 1903 transferred.** All powers, rights and privileges, hitherto granted to the town of Kennebunk by chapter 131 of the private and special laws of 1903 and entitled, "An Act to Authorize the Town of Kennebunk to Own and Maintain an Electric Lighting and Power Plant," shall be vested in said district; and nothing in this act shall abridge, curtail or prevent said district from the enjoyment of said powers, rights and privileges, except that said district shall be vested only with such powers to raise money for its purposes as are herein provided.

**Sec. 3. Territorial limits.** The territorial limits within which said district may sell, distribute and furnish electricity for light, heat and power to individuals, partnerships, firms and corporations shall be as set forth in section 3 of the private and special laws of 1903, except that said district may, as authorized by section 4 of said act, purchase or lease the rights, privileges, properties and franchises of any corporation furnishing elec-

tricity within the territory of said town; and except that the territorial limits of the Kennebunk Light and Power District shall include so much of the towns of Lyman, Wells and North Kennebunkport as are now served by the Kennebunk Light Department, and may include areas contiguous to those areas now served by said Kennebunk Light Department in the towns of Kennebunk, Lyman, Wells and North Kennebunkport, in which at the time no other public utility is furnishing electric service, if and when the Kennebunk Light and Power District shall have received the consent of the public utilities commission in accordance with the provisions of sections 3 and 4 of chapter 46 of the revised statutes of 1944 and all acts amendatory thereof or additional thereto.

**Sec. 4. Power of sale and purchase.** Any public utility now furnishing electric service to the public within the territorial limits of said district is hereby authorized to acquire by purchase the plants, properties, rights, privileges and franchises of the Kennebunk Light and Power District and after acquisition shall have, hold, exercise and enjoy in its own name all of said plants, properties, rights, privileges and franchises as though originally granted to it, and said Kennebec Light and Power District is hereby authorized to convey its plants, properties, rights, privileges and franchises to such public utility.

**Sec. 5. Additional powers.** In addition to all other powers hereby conferred, said district shall have the power whenever it shall be advisable in the discretion of the trustees of said district, either to purchase electricity from, or sell electricity to, any other electric light and power utility in the towns of Kennebunk, Lyman, Wells and North Kennebunkport, and such sale shall not be subject to the terms of section 18 of this act.

**Sec. 6. Right of eminent domain conferred.** The said district for the purposes of its incorporation is hereby authorized to take and hold, as for public uses, by purchase, eminent domain or otherwise, any land or interest therein or water or flowage rights necessary for erecting and maintaining dams and reservoirs, for setting and maintaining poles, wires and other apparatus and structures, for the distribution of electric power and for all other purposes incidental or necessary to the production, distribution and sale of such power for public purposes and for the health, comfort and convenience of the inhabitants of said district. Provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or required for future use by the owner thereof in the performance of a public duty, unless expressly authorized herein or by subsequent act of the legislature.

**Sec. 7. Procedure as to the exercise of right of eminent domain and crossing public utility.** In exercising any rights of eminent domain that are herein conferred upon said district, the district shall file for record in the registry of deeds in said county, plans of the location of lands or interests therein, including flowage rights, to be taken, with an appropriate description and the names of the owners thereof, if known. When for any reason the district fails to acquire property which it is authorized to take and which is described in such location, or if the location so recorded is defective or uncertain, it may at any time correct and perfect such location and file a new description thereof; and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the district shall not be liable for any act which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing; whereon possession may be had of all such lands or interests therein so taken, but title thereto shall not vest in said district until paid for. In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to the place, manner and conditions of the crossing within 30 days after such consent is requested by said district, the public utilities commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utility shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

**Sec. 8. Adjustment of damages.** If any person sustaining damages by any taking as aforesaid shall not agree with the trustees of said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of York county, may have said damages assessed by them; the procedure and all subsequent proceedings and the rights of appeal thereon shall be had under the same restrictions, conditions and limitations as are or may be prescribed in the case of damages by laying out of highways.

**Sec. 9. Board of trustees.** All the affairs of said district shall be managed by a board of trustees composed of 5 members, who shall be first elected, subject to the acceptance of this act, by plurality vote of the legal voters of said town of Kennebunk at the election provided for in section 22 of this act. At said first election, 5 trustees shall be elected, 1 to serve until the annual town meeting next ensuing after the date of such election, 1 until the 2nd annual town meeting thereafter, 1 until the 3rd such town meeting, 1 until the 4th such town meeting and 1 until the 5th such town

meeting; and thereafter 1 trustee shall be elected at the time of each annual town meeting to serve for the term of 5 years. The said trustees shall not be personally liable for any act committed in the performance of their duties as such trustees, except such acts as constitute malfeasance in office.

**Sec. 10. Powers and duties of trustees.** Immediately following the 1st election of trustees of said district and thereafter immediately following each annual meeting of said town, said trustees shall meet and shall organize by the election of 1 of said trustees as president, elect a clerk, adopt a corporate seal, choose a treasurer and all other needful officers and agents for the proper conduct and management of the affairs of said district. The treasurer and all other officers and employees who, by reason of their duties shall have management of or the handling of the funds of the district, shall be bonded in such sum or sums as said trustees shall determine in their discretion. Nothing in this act shall be construed as authorizing said trustees to sell, lease or otherwise dispose of the whole or any part of the franchise of properties of said district necessary or useful in the performance of its duties to the public, unless first authorized by majority vote of the town of Kennebunk to do so.

**Sec. 11. Vacancies in board of trustees.** Vacancies occurring in said board of trustees between annual meetings of the town of Kennebunk shall be filled by appointment by the municipal officers of said town, and such appointee shall serve only until the next annual town meeting, when a successor shall be elected to fill such vacancy for the unexpired term, unless such term shall expire at said next annual meeting in which case election shall be as provided under section 9 of this act. All trustees, whether duly elected or appointed to fill vacancies, shall be eligible to reelection, but no municipal officer of said town of Kennebunk shall be eligible to election or appointment as such trustee. The election or appointment of any trustee as a municipal officer of said town of Kennebunk shall, unless such trustee shall refuse to accept such election or appointment, terminate his trusteeship and the vacancy caused thereby shall be filled as hereinabove provided.

**Sec. 12. Compensation.** Trustees shall not receive any compensation for their services, except that equal compensation for all trustees may be provided by legal vote of the town of Kennebunk at any annual town meeting. Compensation so voted shall be for the term of 1 year, and shall be paid from the funds of said district.

**Sec. 13. Annual audit.** The trustees of said district shall have an annual audit made of its accounts covering the last complete fiscal year,

and said audit shall be made by individuals or firms recognized as competent auditors by training and experience, or by qualified public accountants.

**Sec. 14. Annual report of trustees.** At the close of each fiscal year and immediately following the audit provided by section 13 of this act, the trustees shall make a detailed report of their doings, of the receipts and expenditures of said district, of its financial and physical condition, and of such other matters and things pertaining to said district as shall show the inhabitants of said district how said trustees are fulfilling the duties and obligations of their trust, such report to include the auditors' report and to be made and filed with the municipal officers of the town of Kennebunk, and to be published as a part of the annual report of said town.

**Sec. 15. Existing contracts assumed.** All valid contracts now existing between the Kennebunk Light Department, or the town of Kennebunk by reason of the operation of said Light Department, and any person, partnership, corporation, municipal corporation or public utility, shall be assumed and carried out by said Kennebunk Light and Power District.

**Sec. 16. Taxation.** Said district is declared to be a public municipal corporation of this state, engaged in supplying power and light, as described in section 6 of chapter 81 of the revised statutes, for the purpose of determining taxation of its property.

**Sec. 17. Bonds and notes.** For accomplishing the purpose of this act, said district, through its trustees, is authorized to borrow money temporarily and to issue therefor the interest bearing negotiable notes of the district, not to exceed \$300,000. For the purpose of refunding the indebtedness so created, of paying any necessary expenses and liabilities incurred under the provisions of this act, including the expenses incurred in the creation of the district, and in acquiring those properties and franchises of the town of Kennebunk, hitherto known as the Kennebunk Light Department; of taking water and land, paying damages, erecting, constructing, maintaining and operating power plants, dams, reservoirs, buildings, transmission lines and poles, and all other things or apparatus incidental or necessary to the purposes of this act, and making renewals, extensions, additions and improvements to the same, the said district, through its trustees, may from time to time issue bonds of the district to an amount or amounts necessary in the judgment of the trustees therefor, but in no event shall the amount or amounts of said bonds exceed \$300,000. Said notes and bonds shall be legal obligations of said district, which is hereby declared to be a quasi-municipal corporation within the meaning of section 132 of

chapter 49 of the revised statutes of 1944, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks and exempt from taxation.

**Sec. 18. Trustees to establish rates.** All individuals, partnerships, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rate established by the board of trustees for the electricity used by them, and the rates for electricity so supplied shall be uniform within the territory supplied by the district wherever the installation and maintenance of transmission lines and the apparatus of distribution of electric power and the cost of service is substantially uniform, but nothing in this act shall preclude said district, with the approval of the public utilities commission, from establishing higher rates than the regular rates, in sections where, for any reason, the cost of construction and maintenance or the cost of service exceeds the average, but such higher rates shall be uniform throughout the section where they apply. All rates shall be subject to the approval of the public utilities commission of the state, and shall be so established as to provide revenue for the following purposes:

**I.** To pay the current expenses of operating and maintaining the electric light and power system, including all usual and ordinary repairs, replacements and improvements.

**II.** To provide for the payment of the interest on the indebtedness created or assumed by the district.

**III.** To provide each year a sum equal to not less than 1% nor more than 5% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such indebtedness. The money set aside for the sinking fund shall be devoted to the retirement of the obligations of the district or invested in obligations of the United States government, which said obligations shall mature prior to the date upon which the bonds of the district, for the retirement of which said funds are invested, shall become due.

**IV.** To provide each year a sum equal to not less than 2% nor more than 4% of the book value of the depreciable assets of said district determined as of the close of the preceding fiscal year, which sum shall be turned into a depreciation and obsolescence fund and there kept to provide for repairs, replacements, additions to, and obsolescence and depreciation of such depreciable assets.



**V.** To provide and accumulate from year to year surplus funds to carry out the general purposes of said district, as may be necessary or desirable in the sole discretion of the trustees, including such sums as said trustees may from time to time determine to transfer to the treasurer of the town of Kennebunk for the use of the inhabitants thereof.

**VI.** The rates hereinabove established shall provide no more than a "fair return" as set forth in section 16 of chapter 40 of the revised statutes of 1944.

**Sec. 19. District subject to public utilities commission.** Nothing herein contained is intended to repeal nor shall be construed as repealing the whole or any part of any existing statute; and all rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 40 of the revised statutes of 1944 and all acts amendatory thereof or additional thereto.

**Sec. 20. Incidental powers granted.** All powers, rights and privileges incidental or necessary to the accomplishment of the purposes herein set forth are granted to the public quasi-municipal corporations hereby created.

**Sec. 21. Transfer of Kennebunk Light Department.** In the event that this act shall be accepted and approved as in section 22 hereof, the inhabitants of the town of Kennebunk are expressly authorized to transfer and convey to said district all properties and assets of the "Kennebunk Light Department" so-called, together with all easements, privileges and franchises appurtenant thereto, together with all funds, savings accounts, bonds and moneys of whatever nature, hitherto held by said Kennebunk Light Department or held by said town of Kennebunk for said Kennebunk Light Department and allocated to or constituting a reserve fund for the maintenance, repair, obsolescence and depreciation of the physical assets of said Kennebunk Light Department.

**Sec. 22. Referendum.** This act shall take effect 90 days after the adjournment of the legislature, only for the purpose of permitting its submission to the legal voters of said town of Kennebunk, present and voting for or against the acceptance of the district as hereinafter provided in this section at the next annual town meeting, or at a special town meeting called and held at the regular voting places of the town by the officers of the town of Kennebunk authorized to call such meetings, and such special meeting shall be called within 3 months after this act shall become a law. Such election shall be called, advertised and conducted according to the law relating to municipal elections; provided, however, that the board of regis-

tration in said town of Kennebunk shall not be required to prepare for posting, nor the town clerk to post, a new list of voters. For the purpose of registration of voters, said board shall be in session the 3 secular days next preceding such election, the first 2 days thereof to be devoted to registration of voters and the last day to enable the board to verify the corrections of said lists and to complete and close up their records of said sessions. The town clerk shall reduce the subject matter of this act to the following question: "Shall the act to Incorporate the Kennebunk Light and Power District be accepted?", and the voters shall indicate by a cross or check mark placed against the words "Yes" and "No" their opinion of the same. A check list shall be used at such election. This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at such election; provided that the total number of votes cast for and against the acceptance of this act equals or exceeds 20% of the total vote for all candidates for governor cast in said town of Kennebunk at the next previous gubernatorial election. The result shall be declared by the municipal officers of the town of Kennebunk and due certificate thereof filed by the town clerk with the secretary of state.

If this act is accepted as hereinabove set forth, 5 trustees shall be elected at said election in accordance with the provisions of section 9 to serve for the terms therein set forth.