

MAINE STATE LEGISLATURE

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

Legislative Document

No. 424

H. P. 367

House of Representatives, February 2, 1955.

Referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Jacobs of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-FIVE

AN ACT to Create the Auburn Parking District.

Preamble. Whereas, the parking conditions in the city of Auburn have steadily become more intolerable and because of crowded streets, congested intersections and lack of sufficient opportunities to load and unload passengers and freight, there has arisen a condition highly dangerous to the safety and the prosperity of the citizens of said city and the surrounding towns; now, therefore, Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Auburn Parking District created. In order to provide improved parking conditions in the city of Auburn for the betterment of the safety and prosperity of the people thereof, the people and the territory within the territorial limits of the city of Auburn are hereby constituted as a body corporate and politic under the name of the Auburn Parking District, and such district is hereby authorized and empowered to acquire, construct, operate and maintain parking areas and parking meters at such locations within such territory as shall be approved by the Auburn city council, and to issue parking revenue bonds payable solely from parking fees to pay the cost of such acquisition, construction, operation and maintenance.

Sec. 2. Bonds not to be pledge of state or city. Parking revenue bonds issued hereunder shall not be deemed to be a debt or a pledge of the faith and credit of the state of Maine or of the city of Auburn, but such bonds shall be payable exclusively from the fund herein provided therefor from fees. All such bonds shall contain a statement on their face that the state of Maine and the city of Auburn shall not be obligated to pay the same or the interest thereon and that the faith and credit of the state and city shall not be pledged to the principal or interest of such bonds.

Sec. 3. Definitions. The following words and terms shall have the following meaning:

(a) The words "parking areas" shall mean the parking meters and the parking space contiguous thereto and the parking lots to be constructed as hereinafter provided, and shall be deemed to include not only the parking lots and all approaches thereto, but also all property rights, easements and franchises relating and deemed necessary or convenient for the construction or the operation of the areas.

(b) The term "cost of the parking areas" shall embrace the cost of purchasing and constructing the parking meters, parking lots, and all approaches thereto; the cost of all lands, property rights, easements and franchises acquired which are deemed necessary for such construction; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for 1 year after completion of construction or for 1 year after completion of construction of any component integral operating unit thereof; cost of traffic and revenue estimates and of engineering and legal expenses; plans, specifications, surveys, estimates of costs of revenues, administration expenses and such other expenses as may be necessary or incident to the financing herein authorized; the construction and purchase of the meters, parking lots and approaches, the placing of the same in operation, and the condemnation of the property necessary for such construction and operation. Any expenses hereafter incurred by the city of Auburn and its agents and employees in connection with the purchase and construction of the parking meters, parking lots and approaches thereto shall be regarded as a part of the cost of the parking areas and shall be reimbursed to the city out of the proceeds of the parking revenue bonds hereinafter authorized.

Sec. 4. Powers.

(a) The "Auburn Parking District" shall be a body both corporate and politic in the state of Maine and shall have powers

- (1) to sue and to 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 and rules and regulations governing use of the parking areas; to publish the same as such publication is necessary or advisable and to cause records of its proceedings to be kept;
- (4) to construct, maintain, reconstruct and operate parking areas in the city of Auburn;
- (5) to acquire, hold and dispose of personal property for its purposes;
- (6) to acquire in the name of the district by purchase, lease, or otherwise real property and rights or easements therein deemed by it necessary or desirable for its purposes and to use and dispose of 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 for the use of said parking meters and/or parking lots 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 of America or any instrumentality or agency of the United States of America, the state of Maine, or any of its agencies or instrumentalities, municipalities, public corporations, or bodies existing therein, private corporations, partnerships, associations, and individuals, provided, however, that no products used in or for the servicing of motor vehicles shall be sold or dispensed at or in connection with public off-street parking facilities by the district or any lessee thereof;

(10) to employ such assistants, agents and servants, and other employees, as it shall deem necessary or desirable for its purposes;

(11) to exercise any of its powers in the public domain of the United States of America, unless the exercise of such powers is not permitted by the laws of the United States of America;

(12) to borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the district and to secure the payment of such obligations or any part thereof by pledge of any part of the revenue of the parking areas;

(13) to do all other lawful things necessary and incidental to the foregoing powers.

All property of the district 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.

(b) The district shall consist of 5 members appointed by the city council of the city of Auburn and in addition thereto, the city manager shall be a member ex officio. In the first instance, 1 member shall be appointed for a term of 5 years, 1 for a term of 4 years, and 1 for a term of 3 years, 1 for a term of 2 years, and 1 for a term of 1 year. At the expiration of each of said terms, a member shall be appointed for a full term of 5 years. In case of any vacancy in said district, the city council shall appoint a member thereto for the balance of the unexpired term. The district shall elect from among its members a chairman, a secretary, and a treasurer, except that the offices of secretary and treasurer may be occupied by one and the same person.

Three members of the district shall constitute a quorum, and the district may act by majority vote. Before the issuance of any parking revenue bonds under the provisions of this act, each appointed member of the district shall execute a bond in the penalty of \$5,000. Each such bond is to be approved by the city solicitor and to be conditioned upon the faithful performance of the duties of the office and shall be filed in the office of the city clerk. All expenses incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act and no liability or obligation shall be incurred hereunder beyond the extent to which money shall have been provided under the authority of this act.

Sec. 5. Eminent domain.

(a) Whenever a reasonable price cannot be agreed upon for the purchase or lease of real property found necessary for the purposes of the district or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the district is hereby authorized and empowered to acquire by condemnation any such real property, whether wholly or partly constructed, or interest or interests therein and any lands, rights, easements, franchises and other property deemed necessary or convenient for the construction or the efficient operation of the parking areas in the manner hereinafter provided. The district herein provided may exercise the right of eminent domain vested in said district for the purpose of this act after hearing, notices of the time and place of said hearing having been given by publication in the Lewiston Daily Sun once a week for 2 consecutive weeks previous to the time of said hearing; and provided further, that if the land owner is a resident of the state, service shall also be made on him by giving him in hand or leaving at his last and usual place of abode an attested copy of said notice, such service to be made by any officer qualified to serve civil process in the state. The secretary of said district shall keep a record of their proceeding and their determination and decision, which shall set forth a description of the land or easement taken, and the owners, if known, and the amount of damages awarded therefor. Upon the signing of said record of said members and the filing of the same in the registry of deeds for the county of Androscoggin, said district may enter upon such land and take possession of the same or an easement therein, as the case may be, for the purposes of this act. Any person aggrieved by the decision of said district, as it relates to the damages for land or easements therein so taken, shall have the same rights of appeal as are provided in the case of the laying out of town ways.

(b) Title to any property condemned by the district shall be taken in the name of the district. The district shall be under no obligation to accept and pay for any property condemned or any costs incidental to any condemnation proceedings and shall in no event pay for the same except from the sums provided by this act; and in any condemnation proceedings, the court having jurisdiction of the suit, action, or proceeding may make such orders as may be just to the district and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against loss or damage by reason of the failure of the district to accept and pay for the property; but such undertaking or security shall impose no liability upon the city of Auburn.

(c) The "District" and its authorized agents and employees may enter upon any lands, waters, and premises in the city for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this act and such entry shall not be deemed a trespass.

(d) The county of Androscoggin and the city of Auburn and all public agencies and commissions of the state of Maine notwithstanding any contrary provision of law are hereby authorized to lease, lend, grant, or convey to the district upon its request upon such terms and conditions as the proper authorities of said county, city, agencies, or commissions may deem reasonable and

fair and without the necessity of any advertisement, order of court, or other action or formality other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the district including real property already devoted to public use.

(e) In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to 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.

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 acquired 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. 6. Issuance of bonds. The district is hereby authorized to provide by resolution from time to time for the issuance of bonds for the purpose of paying the cost of the parking areas, provided however, that at no time shall the amount of bonds issued and outstanding exceed the sum of \$500,000. 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 district 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 district 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 50 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 or principal;
- (7) For registration if the district deems such to be desirable;
- (8) For the pledge of any or all 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 the disposition thereof;
- (11) For limitation on the issuance of additional bonds;

(12) For the procedure, if any, by which the contract with the bondholders 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 parking areas;

(15) For covenants fixing and establishing such prices, rates and fees for the use of said parking areas and other services made available in connection with said parking areas so as to provide at all time funds which will be sufficient;

(a) To pay all costs of operation and maintenance of said parking areas together with the necessary repairs thereto;

(b) To meet and pay the principal and interest of all such bonds as they severally become due and payable;

(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 said parking areas as the district shall determine;

(16) For such other covenants as to such prices, rates and fees as the district shall determine;

(17) For covenants as to the rights, liability, powers and duties arising upon the breach by the district 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 insurance money;

(20) For limitations upon the exercise of the powers conferred upon the district by this act;

(21) For the issuance of such bonds in series thereof;

(22) The performance by the district of any and all such acts and things as may be necessary, convenient or desirable in order to secure its bonds or in the absolute discretion of the district as will tend to make the bonds more marketable notwithstanding that such acts or things may not be enumerated herein.

Sec. 7. Application of proceeds of bonds. All moneys received from any bonds issued pursuant to this act shall be applied solely

(1) to the payment of the cost of the parking areas, or

(2) to the appurtenant fund; and there shall be and hereby is created and granted a lien upon such moneys until so applied in favor of holders of such bonds or the trustee hereinafter provided for in respect of such bonds.

Sec. 8. Bonds; how secured. In the discretion of the district, such bonds may be secured by a trust indenture by and between the district and a corporate trustee which may be any trust company or bank having the powers of a trust company within or outside of the state of Maine. Such trust indenture may pledge or assign revenue to be received but shall not convey or mortgage the parking areas or any part thereof. Either the resolution providing for the issuance of such bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the district in relation to the acquisition of properties and the construction, maintenance, operation and repair and insurance of the parking areas and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as depository of the proceeds of the bonds or revenues and to furnish such indemnity bonds or to pledge such securities as may be required by the district. Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and indentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the district may deem reasonable and proper for the security of bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of the parking areas.

Sec. 9. Exemption from taxes. The accomplishment by the district of the authorized purpose stated in this act, being for the benefit of the people of the state of Maine and the city of Auburn and for the improvement of their commerce and prosperity in which accomplishment the district will be performing essential governmental functions, the district shall not be required to pay any taxes or assessments on any property acquired or used by it for the purposes provided in this act, nor shall the district be required to pay any tax upon its income except as may be required by the laws of the United States of America, and the bonds or other securities and obligations issued by the district, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within the state of Maine.

Sec. 10. Refunding bonds. The district is hereby authorized to provide by resolution for the issuance of parking revenue refunding bonds for the purpose of refunding any parking revenue bonds issued under the terms of this act and then outstanding. The issuance of such parking revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof and the duties of the district in respect to the same, shall be governed by the foregoing provisions of this act insofar as the same may be applicable and by the following provisions:

- (a) No parking revenue refunding bonds shall be delivered unless delivered in exchange for parking revenue bonds to be refunded thereby, except in the amount necessary to provide for the payment of matured or redeemable parking revenue bonds or parking revenue bonds maturing or redeemable within 3 months, including any redemption premium thereon.

(b) No parking revenue refunding bonds shall be issued, unless issued to refund parking revenue bonds which have matured or will mature within 3 months, or unless the interest rate of the parking revenue refunding bonds shall be at least $\frac{1}{4}$ of 1% less than the interest rate borne by the parking revenue bonds to be refunded.

Sec. 11. Maintenance of the parking areas.

(a) The parking areas when finally completed or any integral operating unit thereof, shall be maintained and repaired by and under the control of the district, and, at the discretion of the district, the services of the city of Auburn, so far as the same are available or expedient, may be utilized for this purpose. All charges and costs for such maintenance and repairs actually expended by said city of Auburn shall be paid to it by the district. Such parking areas shall be operated by such force of fee collectors and other operating employees as the district may in its discretion employ. The district may utilize the services of the Auburn police force to enforce the rules and regulations of the district.

(b) The district may by regulation prescribe and revise from time to time the time limitations for parking beside the parking meters and/or within the parking lots provided by the district.

(c) The district is hereby authorized to fix and to revise from time to time fees for the use of the parking meters and the contiguous space and/or the parking lots and to charge and collect the same. Such fees may be charged against and payable by the owners of vehicles utilizing said meters and the contiguous space and/or the parking lots, or persons in possession of said vehicles, or those in whose name said vehicles are registered. Such fees shall be so fixed and adjusted as to provide a fund at least sufficient with other revenues of the parking areas, if any, to pay:

(1) The cost of maintaining, repairing and operating the parking areas; and

(2) The bonds and interest thereon, and all sinking fund requirements, and other requirements provided by the resolution authorizing issuance of the bonds or by the trust indenture as the same shall become due.

(d) Fees shall not be subject to supervision or regulation by any state commission, board or agency. The fees and all other revenues derived from the parking areas, except such part thereof as may be required to pay the cost of maintaining, repairing and operating the parking areas and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be set aside at such regular intervals as may be provided in such resolution or such trust indenture, in a sinking fund which is pledged to, and charged with the payment of;

(1) the interest upon such bonds as the interest shall fall due;

(2) the principal upon the bonds as the same shall fall due;

- (3) the necessary fiscal agency charges for paying principal and interest;
and
- (4) any premium upon bonds retired by call or purchase as herein provided.

The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all bonds issued hereunder without distinction or priority of one over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust indenture, any moneys in such sinking fund in excess of the amount equal to 1 year's interest upon all bonds then outstanding may be applied to the purchase or redemption of bonds. All bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

Sec. 12 Provisions in case of default of bonds. In the event that the district 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 or the trustee under a trust indenture, the holders of 25% in aggregate principal amounts 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 purposes herein provided, except to the extent the rights herein given may be restricted by the resolution passed before the issuance of the bonds or by the trust indenture. 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 in 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 action or suit in equity require the district to account as if it were trustee of an expressed trust for the bondholders.

Such trustee shall be entitled as a right to the appointment of a receiver, who may to the extent that the district could itself do, enter and take possession of the facilities of the district or any part thereof, the revenue or receipts which are or may be applicable to the payment of the bonds which are or may be in default, and operate and maintain the same and collect and receive all revenue thereafter arising therefrom in the same manner as the district might do, and shall deposit all such money 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 the expenses of the trustee and the receiver, if any; and all costs and disbursements allowed by the court shall be a first charge upon any revenue and receipts derived from the parking areas, the revenues and receipts from which are or may be applicable to the payment of

the bonds so in default. Such trustees shall in addition to the foregoing, have and possess all the powers necessary and appropriate for the exercise of all the 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 any 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 district including the right to require the district to carry out any agreement or covenant and to perform its duties under this act.

Sec. 13. Interim certificates. Prior to the issuance of the bonds hereunder the district may issue interim certificates in such manner and with such conditions as the district may determine to be exchanged for such bonds when issued.

Sec. 14. Trust funds. Subject to any agreement with the bondholders, all revenue received from the operation of said parking areas after deducting the expenses of the cost of the parking areas and operation and maintenance and the sums necessary to provide for the payment of the principal and the interest of the bonds of the district, in accordance with the provisions thereof, shall be held and invested by the district to establish trust funds for reserve and sinking funds for the retirement of bonded indebtedness. Once each year or oftener at the discretion of the district, the district shall publish a written report of its proceedings during the past year and giving a detailed income statement and balance sheet of said district.

Sec. 15. Termination of the district. When all bonds and the interest thereon shall have been paid or a sufficient amount for the payment of all bonds and the interest to maturity thereon shall have been set aside in trust for the benefit of the bondholders and shall continue to be held for that purpose, the district shall be dissolved and the parking areas, its leases, rights, easements, franchises, lands, and properties shall become the property of the city of Auburn and all revenue therefrom shall become payable to the city of Auburn and the parking areas shall be maintained and operated by said city and all funds of the district not required for the payment of the bonds and all equipment and other property belonging to the district appertaining to the maintenance and operation of the parking areas shall be vested in said city.

Sec. 16. Saving 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. 17. Governmental function. It is hereby declared, that the purposes of this act are public and that the district shall be regarded as performing a governmental function in the carrying out of the provisions of the act. The liability of said district for injuries to persons and property arising out of defects in off-street parking areas, entrances and exits thereof controlled by the district shall be the same and enforced in the same manner as similar actions against municipalities for defects in highways.

Sec. 18. Penalty. Any violation of published rules and regulations relating to the parking areas, their use or services or any failure or neglect to pay fees or

charges for use of the parking areas shall be deemed a misdemeanor and shall be punishable by a fine not exceeding \$10; providing, however, that nothing herein contained shall prevent the district from collecting payment for use of the parking areas by action at law or in equity. In any civil criminal proceeding proof of the presence in the parking areas of a vehicle parked beyond the legal time limitations shall be prima facie evidence that the person in whose name said vehicle is registered caused, allowed, permitted or suffered such vehicle to be so parked.

Sec. 19. Referendum; effective date; return to Secretary of State. 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 the city of Auburn, provided the municipal officers vote and approve its submission to the legal voters prior to January 1, 1956. If the municipal officers shall so vote and approve its submission, it shall be submitted to said legal voters at any regular city election or special city election called and held for the purpose at the regular voting places of the city in the manner now provided by law for the calling of elections in a city; and provided further that said submission to the legal voters shall be had not later than January 1, 1956. Such special election shall be called, advertised and conducted according to the law relating to such municipal elections; provided, however, that the board of registration in said city shall not be required to prepare for posting, nor the city clerk to post, a new list of voters, and for the purpose of registration of voters, said board shall be in session the 3 secular days preceding such election, the first 2 days to be devoted to registration of voters and the last day to enable the board to verify the corrections of said list and to complete and close up their records of said sessions. A check list shall be used at such election. The city clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall the Act to Create the Auburn Parking District be accepted?" and the voters shall indicate by a cross or check mark placed after the words "Yes" or "No" their opinion of the same. The result shall be declared by the municipal officers and due certificate thereof filed by the city clerk with the Secretary of State.

This act shall take effect for all the purposes hereof immediately upon its acceptance by a majority of the legal voters voting at said election; provided that the total number of votes cast for and against the acceptance of this act at said election equaled or exceeded 25% of the total vote for all candidates for Governor cast in said city at the next previous gubernatorial election.