

MAINE STATE LEGISLATURE

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

Legislative Document

No. 1114

H. P. 782

House of Representatives, March 5, 1959

Referred to Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Boone of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-NINE

AN ACT to Create the Perry Recreation Authority.

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

Sec. 1. Perry Recreation Authority created. In order to develop a new and additional recreational area in eastern Maine, the Perry Recreation Authority, sometimes referred to as the "authority," is hereby created and is hereby authorized and empowered to develop, construct, operate and maintain a central recreational area, sometimes hereinafter referred to as "recreation area" or as "recreation area project," in the following described portions of the Town of Perry, in the County of Washington, namely :

A strip of land 400 feet wide measured from high water mark and bordering upon waters of Little River, so called, in the Town of Perry, extending from Head of Tide at Leighton Mill Bridge to tidewater at Gleason's Cove, so called.

Said authority shall be for the purpose of operating, maintaining, extending and increasing recreational facilities in the Town of Perry and to issue revenue bonds in amounts of \$10,000, payable solely from annual income, to pay the costs of the construction of such facilities.

Sec. 2. Bonds not to be pledges of communities. Revenue bonds issued under the provisions of this act shall not be deemed to be a debt of the State of Maine, of any political subdivision thereof, or of any district, or a pledge of the faith and credit of the State, of any such political subdivision or of any district, but such bonds shall be payable exclusively from the income accruing to the Perry Recreation Authority.

Sec. 3. Powers. (a) There is hereby created an authority to be known as the "Perry Recreation Authority," which shall be a body both corporate and politic in the State of Maine and shall have powers: (1) to sue and be sued; (2) to have a seal and to alter the same at pleasure; (3) to adopt from time to time and amend by-laws covering its procedure; (4) to appoint officers, agents and employees and prescribe their duties and fix their compensation; (5) to acquire in the name of the authority by purchase, condemnation, subject to the limitations hereinafter contained, lease or otherwise, real estate and rights or easements therein situate in said recreation area deemed by the authority necessary or desirable for its purposes and to use such property, and also to acquire by such means or any of them real estate and rights or easements therein deemed by the authority necessary or desirable for the purpose of roads or ways extending to said recreation area or any part thereof; (6) to acquire, hold and dispose of personal property for its purposes; (7) subject to the provisions of this act, from time to time to lease, but without restriction as to term, any property which said authority shall determine advisable to more fully carry into effect the purposes of said authority; (8) to acquire, construct, improve, maintain and operate in said recreation area all manner of public improvements, including but without limitation, public assembly halls, parks, playgrounds, hotels, motels, athletic fields, lodges, restaurants, cabins, bathhouses, boathouses, wharves, pavilions, swimming pools, and other recreational facilities and any and all facilities of any kind which in the judgment of the authority are necessary or convenient to the exercise of the powers conferred upon it by this act; (9) to charge and collect fees for the use of the services made available to the public by said authority; to prescribe and enforce rules and regulations for the use of all recreational and other facilities and properties of the authority, including but not necessarily limited to the restriction or prohibition of the use of firearms, the inspection of boats, the issuance of permits for the operation of water craft of all kinds, the charging and collection of fees for the inspection and operation of such craft, prescribing the type, style, location and equipment of all wharves, docks, anchorages, pavilions, restaurants and other structures or buildings which may be constructed along the shores or along the waters of any body of water or upon other property controlled by the authority and providing for the licensing, inspection and supervision of the same, in granting and imposing charges for permits for all commercial uses or purposes to which any of the properties of the authority or any structures or buildings located on property of the authority may be used; (10) to make contracts with the United States of America or any instrumentalities or agencies of the United States of America, the State of Maine or any of its agencies or instrumentalities, municipalities, public corporations or body existing therein, private corporations, partnerships, associations and individuals; (11) to accept grants and the cooperation of the United States of America or any agency thereof in the construction, maintenance, reconstruction, operation and financing of the recreation area; and to do any and all things necessary in order to avail itself of such aid and cooperation; (12) to employ such assistants, financial advisors, agents and servants, engineering, architectural and construction experts and inspectors, attorneys and such other employees as it shall deem necessary or desirable for its purposes; (13) to borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the authority, and to secure the payment of such obligations or any part thereof by pledge of any part of

the revenue of the recreation area project; and (14) to do all other lawful things necessary and incidental to the foregoing powers.

(b) The authority shall consist of 5 members who shall be appointed by the Governor by and with the advice and consent of the Council. The appointed members shall be residents of the Town of Perry and shall have been qualified electors therein for a period of at least one year next preceding their appointment. The members of the authority first appointed shall continue in office for terms of 1, 2, 3, 4 and 5 years, respectively, the term of each such member to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of 5 years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and any member of the authority shall be eligible for reappointment. Immediately after such appointments the members of the authority shall enter upon their duties. The Governor shall name one of the appointed members as chairman of the authority. The authority shall elect a secretary and treasurer, who need not be a member of the authority, and shall elect an executive director or general manager, who is not a member of the authority. A majority of the members of the authority shall constitute a quorum and the vote of 3 members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the members to exercise all the rights and perform all the duties of the authority. Before the issuance of any revenue bonds under the provisions of this act, each appointed member of the authority shall execute a bond in the penalty of \$5,000, and the secretary and treasurer shall execute a bond in the penalty of \$10,000 each, such bond to be approved by the Attorney General and to be conditioned upon the faithful performance of the duties of his office, which bond shall be filed in the office of the State Auditor. Each member of the authority shall be reimbursed for necessary expenses incurred in the performance of his duties. 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. 4. 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 authority or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the authority 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 recreation area. In such event the authority shall cause the land to be taken, to be surveyed and described and a plan thereof and said description to be recorded in the registry of deeds for the county or registry district where the same is located, and notice thereof shall be given in some newspaper published wholly or in part in said county or if no such newspaper exists, then in a newspaper of state-wide circulation. The county commissioners of the county wherein such property or land is located shall constitute a board of appraisers which shall, on petition of the authority or interested parties, meet and ascertain and determine the

value of the property or land to be taken, make a correct return of their doings, signed by them, accompanied by an accurate plan of the land; and state in their return the names of the persons to whom damages are allowed and the amount allowed to each. The county commissioners shall give reasonable notice to interested parties of the time and place of their meeting and afford interested parties an opportunity to be heard. Their return shall be filed with the clerk of the county commissioners and remain in the custody of their clerk for inspection. Any interested party aggrieved by their determination of damages may appeal from their determination to the Superior Court of the county at the next regular term of said court following the date of filing of their return with their said clerk by at least 60 days. If no such appeal is made, the proceedings shall be closed and become effectual; all claims for damages not allowed by them shall be forever barred; and all damages allowed by them shall be final. If an appeal be taken at the time and in the manner provided herein, the court shall determine the damages by a committee of reference if the parties so agree, or by a verdict of its jury, and shall render judgment for the damages recovered, and judgment for costs in favor of the party entitled thereto. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the first term of court shall file a complaint setting forth substantially the facts, upon which the case shall be tried like other cases. The party prevailing recovers costs to be allowed and taxed by the court. The committee of reference shall be allowed a reasonable compensation for their services, to be fixed by the court upon the presentation of their report and paid from the county treasury upon the certificate of the clerk of courts. From the action of the court or on exceptions, or from any judgment after a jury trial, an appeal may be taken by any party to the Supreme Judicial Court.

(b) Title to any property condemned by the authority shall be taken in the name of the authority. The authority shall be under no obligation to pay for any property condemned or any costs incidental to any condemnation proceedings 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 authority 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 authority to accept and pay for the property; but such undertaking or security shall impose no liability upon the State of Maine, any political subdivision thereof or any district, except such as may be paid from the funds provided under the authority of this act. Upon failure of the authority to comply with any order so made, the said court may, upon petition therefor by the party or parties aggrieved, set aside and declare void the condemnation proceeding and order.

(c) The authority and its authorized agents and employees may enter upon any lands, waters and premises in the recreation area 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 but the authority shall be liable for actual damage caused thereby.

(d) All counties, cities, towns and other political subdivisions or other municipalities, corporations, quasi-municipal corporations and all public agencies

and commissions of the State of Maine, notwithstanding any contrary provision of law, are hereby authorized and empowered (1) to enter into contracts with the authority, and (2) to lease, lend, contribute, grant or convey to the authority upon its request, upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions or other municipalities, corporations or quasi-municipal corporations may deem reasonable and fair and without the necessity for any advertisement or order of court or other action or formality other than the regular and formal action of the authorities concerned, any real or personal property which may be necessary or convenient to the effectuation of the authorized purposes of the authority, including real property already devoted to public use, and to raise and appropriate money for such purposes, provided that if any such property is necessary or useful to a public utility in the performance of its duties to the public, that the approval of the Public Utilities Commission and the utility affected shall first be secured in accordance with the provisions of the Revised Statutes of 1954, chapter 44, and all acts amendatory thereof and additional thereto.

(e) If reasonable and fair conditions for the acquisition of property or rights, as provided in the preceding subsection, cannot be agreed upon, the property may be taken under condemnation proceedings in the same manner as provided in subsection (a) of this section, and in that event the county commissioners shall determine the reasonable and fair conditions for the acquisition of property or rights by the authority. The county commissioners of the county wherein such property or land is located shall constitute a board which shall, on petition of the authority or interested parties, meet and ascertain and determine the reasonable and fair conditions for the acquisition, make a correct return of their doings, signed by them, accompanied by an accurate plan of the land or situation involved. The county commissioners shall give reasonable notice to interested parties of the time and place of their meeting and afford interested parties an opportunity to be heard. Their return shall be filed with the clerk of the county commissioners and remain in the custody of their clerk for inspection. Any interested party aggrieved by their determination of reasonable and fair conditions may appeal from their determination to the Superior Court of the county at the next regular term of said court following the date of filing their return with their said clerk by at least 60 days. If no such appeal is made, the proceedings shall be closed, and become effectual. If an appeal be taken at the time and in the manner provided herein, the court shall determine the reasonable and fair conditions for the acquisition and make its decree therefor. The appellant shall file notice of his appeal with the county commissioners within the time above limited, and at the first term of court shall file a complaint setting forth substantially the facts, upon which the case shall be heard by the court. From the action of the court or on exceptions, an appeal may be taken by any party to the Supreme Judicial Court.

(f) Whenever the authority has instituted condemnation proceedings as hereinbefore provided and when the authority has tendered a bond or other security in sufficient sum to secure the owner or owners for damages and the same has been accepted or if the acceptance has been refused and the same has been filed and approved by the court having jurisdiction over such condemnation proceeding, the authority shall have the right to immediate possession of the property

which is the subject matter of the condemnation proceedings and may enter thereon in the name of the authority.

(g) Nothing herein contained shall be construed as authorizing said authority to take by condemnation proceedings any of the property or facilities of any public service corporation, municipality or district used or acquired for future use by the owner thereof in the performance of public duty or any property owned by any other person and in use by any public service corporation, municipality or district in the performance of public duty.

Sec. 5. Procedure if public utility must be crossed. 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 50 days after such consent is requested by said authority, the Public Utilities Commission shall determine the place, manner and conditions of such crossing; and all work in 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 authority.

Sec. 6. Issuance of bonds. The authority is hereby authorized to provide by resolution from time to time for the issuance of bonds for the purpose of paying construction costs, interest payments becoming due during the period of construction, organization expense, costs of developing the recreation area (including but not limited to the construction of public assembly halls, parks, playgrounds, hotels, motels, athletic fields, lodges, restaurants, cabins, bath-houses, boathouses, wharves, pavilions, swimming pools, and other facilities and improvements for the convenience of the public making use of the recreation area), costs of acquiring land, and for the purpose of paying for any indebtedness which the authority may lawfully incur hereunder, or for any or all of such purposes. The bonds of the authority shall not constitute a charge of the State or of any agency or political subdivision thereof but shall be payable solely from the revenue from the said recreation area project. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable. In case any of the members of the authority whose signatures appear on the bonds or coupons shall cease to be such members before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such members had remained in office until such delivery. The authority may in the resolution authorizing prospective issues provide as to such bonds:

- (1) The manner of executing the bonds and coupons;
- (2) The form and denomination thereof;
- (3) Maturity dates not more than 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 and principal;
- (7) For registration if the authority deems such to be desirable;

- (8) For the pledge of all or any of the revenue for securing payment;
- (9) For the replacement of lost, destroyed or mutilated bonds;
- (10) The setting aside of reserve and sinking funds and the regulation and disposition thereof;
- (11) For limitation on the issuance of additional bonds;
- (12) For the procedure, if any, by which the contract with the bondholder may be abrogated or amended;
- (13) For the manner of sale and purchase thereof;
- (14) For covenants against pledging of any of the revenue of the recreation area project;
- (15) For covenants to fix and establish such prices, rates and charges for the services made available in connection with said recreation area project so as to provide at all times funds which will be sufficient:
 - (a) To pay all costs of operation and maintenance of said recreation area project, its buildings, reservoirs, dams and other facilities as the authority shall determine, together with necessary repairs thereto;
 - (b) To meet and pay the interest and principal of all of such bonds as they severally become due and payable;
 - (c) For the creating of such reserves for the interest and principal of all such bonds and for the meeting of contingencies and the operation and maintenance of said recreation area project, its buildings, reservoirs, dams and other facilities as the authority shall determine;
- (16) For such other covenants as to such prices, rates and charges as the authority shall determine;
- (17) For covenants as to the rights, liability, powers and duties arising upon the breach by the authority of any covenant, condition or obligation;
- (18) For covenants as to the bonds to be issued and as to the issuance of said bonds in escrow and otherwise and as to the use and disposition of the proceeds thereof;
- (19) For covenants as to the use of its property and the maintenance and replacement thereof and the insurance to be carried thereon and the use and disposition of insurance money;
- (20) For limitations upon the exercise of the powers conferred upon the authority by this act;
- (21) For the issuance of such bonds in series thereof;
- (22) The performance by the authority of any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or in the absolute discretion of the authority as will tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated 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 recreation area project, including expenses, organizational or otherwise, or capital expenditures therefor or (2) to the maintenance thereof; 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 authority, such bonds may be secured by a trust indenture by and between the authority 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 recreation area project 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 authority in relation to the acquisition of properties and the construction, maintenance, operation, repair and insurance of the recreation area project, 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 a 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 authority. Such indenture may set forth the rights and the remedies of the bondholders and of the trustee and may restrict the individual right of action of the bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the authority 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 recreation area project.

Sec. 9. Exemption from taxes. The Perry Recreation Authority herein created, being a non-profit organization and the accomplishment by the authority of its authorized purpose as set forth in this act being for the benefit of the people of the State of Maine and their prosperity, in which accomplishment the authority will be performing essential governmental functions, the authority shall not be required to pay any taxes or assessments on any property acquired or accepted by it for the purposes provided in this act, nor shall the authority 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 authority, 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 authority is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of refunding any bonds issued under the provisions of this act and then outstanding. The issuance of such bonds, the maturities and other details thereof, the rights of holders thereof and the duties of the authority 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 refunding bonds shall be delivered unless delivered in exchange for revenue bonds to be refunded thereby, except in the amount necessary for the payment of matured or redeemable revenue bonds or bonds maturing or redeemable within 3 months, including and redemption premium thereon.

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

Sec. 11. Maintenance of the recreation area project.

(a) The recreation area project when finally completed, or any integral operating unit thereof, shall be maintained and repaired by and under the control of the authority. Such recreation area project shall be operated by such force of supervisors and other operating employees as the authority may in its discretion employ.

(b) The authority is hereby authorized to fix and to revise from time to time rates and charges for the services offered to the general public and charge and collect the same. Such rates and charges shall be so fixed and adjusted as to provide a fund at least sufficient with other revenues of the authority, if any, to pay (1) the cost of maintaining, repairing, and operating the recreation area project; and (2) the bonds and the interest thereon and all sinking fund requirements and other requirements provided by the resolution authorizing the issuance of the bonds or by the trust indenture, as the same shall become due.

(c) The rates and charges and all other revenues derived from the recreation area project, except such part thereof as may be required to pay the cost of constructing, maintaining, repairing and operating the recreation area project 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 in such trust indenture, in a sinking fund which is pledged to, and charged with the payment of :

- (1) the interest upon such bonds as such interest shall fall due ;
- (2) the principal of the bonds as the same shall fall due ;
- (3) the necessary fiscal agency charges for paying principal and interest ;
and
- (4) any premiums 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 such 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.

Sec. 12. Provisions in case of default on bonds. In the event that the authority shall make default in the payment of principal or interest on any of the bonds after the same shall fall due and such default shall continue for a period of 60 days or default in any agreement with the bondholders 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 purpose 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 at law or in equity enforce the rights of the bondholders;

(2) bring suit upon the bonds;

(3) enjoin any acts or other things which may be unlawful or in violation of the rights of the bondholders;

(4) by action or suit in equity require the authority to account as if it were trustee of an expressed trust for the bondholders. Such trustee to the extent that the authority could itself do, may enter and take possession of the facilities of the authority of any part thereof, the revenue or receipts from which are or may be applicable to the payment of the bonds so in default, and operate and maintain the same and collect and receive all revenue thereafter arising therefrom in the same manner as the authority might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and the receiver, if any; and all costs and disbursements allowed by the court shall be a first charge on any revenues and receipts derived from the recreation area project, 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 any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights. In addition to other rights and limitations any bondholder shall have the right by mandamus or other suit, action or proceeding in law or in equity to enforce his rights against the authority including the right to require the authority to carry out any agreement or covenant and to perform its duties under this act.

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

Sec. 14. Trust funds. All moneys received by the authority pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this act.

Sec. 15. 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. 16. Governmental function. It is hereby declared that the purposes of this act are public and that the authority shall be regarded as performing a governmental function in the carrying out of the provisions of the act.

Sec. 17. Income from bonds; tax exempt. The income from bonds issued by the authority shall be exempt from taxation.

Sec. 18. Act void unless property acquired. If said authority shall fail to purchase or to file its petition to take by eminent domain as in this act provided, on or before 2 years from the effective date of this act, any properties, franchises, rights and privileges to be used or usable in connection with the recreation area project, then this act shall become null and void.

Sec. 19. Appropriation. There is hereby appropriated from the Unappropriated Surplus of the General Fund the sum of \$25,000 for the fiscal year ending June 30, 1960 to carry out the initial construction authorized under this act. This appropriation shall not lapse, but shall remain a continuing carrying account until June 30, 1961.