

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1851--2.

Augusta:

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1852.

THIRTY-FIRST LEGISLATURE.

No. 19.]

[SENATE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FIFTY-TWO.

AN ACT to authorize the city of Bangor to aid the construction of the Penobscot and Kennebec Railroad.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. The city of Bangor is hereby authorized
2 to loan its credit to the Penobscot and Kennebec Rail-
3 road Company, in aid of the construction of their
4 railroad, subject to the following terms and conditions :

SECT. 2. This act shall not take effect, unless it
2 shall be accepted by the directors of said railroad com-
3 pany, and by the vote of the inhabitants of said city,
4 voting in ward meetings duly called, according to law ;

5 and at least two thirds of the votes cast at such ward
6 meetings shall be necessary for the acceptance of this
7 act. The returns of such ward meetings shall be
8 made to the aldermen of the city and by them count-
9 ed and declared, and the city clerk shall make record
10 thereof.

SECT. 3. Upon the acceptance of the act as afore-
2 said, the city treasurer is authorised to make and issue
3 from time to time as hereinafter provided, for the pur-
4 poses contemplated in this act, the scrip of said city,
5 in convenient and suitable sums payable to the holder
6 thereof, on a term of time not less than twenty, nor
7 more than thirty years, with coupons for interest at-
8 tached, payable semi-annually, or yearly, as may be
9 agreed.

SECT. 4. If the railroad company shall have re-
2 ceived from assessments upon the shares of the private
3 stockholders therein, and shall have expended upon
4 the construction of the road, and its necessary equip-
5 ment, within five years from the approval of this act,
6 the sum of five hundred thousand dollars, the city
7 treasurer shall then deliver to the directors of the com-
8 pany, the scrip aforesaid, to the amount of three hun-

9 dred thousand dollars. But the whole amount of the
10 scrip to be issued and delivered shall never exceed
11 three hundred thousand dollars.

SECT. 5. Before the delivering of any of the scrip
2 provided in the preceding section, the directors of the
3 company shall furnish satisfactory evidence to the
4 mayor and aldermen of the city, that the pre-requisites
5 in the several cases herein prescribed have been re-
6 spectively complied with, and shall file with the city
7 treasurer a certificate of such compliance, signed by
8 the president and treasurer of the company, to which
9 certificate they shall severally make oath. In all
10 cases the scrip shall bear date from the delivery there-
11 of, and the proceeds thereof shall be applied by the
12 directors of the company exclusively to the construc-
13 tion and necessary furniture and equipment of the
14 Penobscot and Kennebec railroad.

SECT. 6. Upon the delivery of each and every por-
2 tion of the scrip aforesaid, the directors shall execute
3 and deliver to the city treasurer, the bond of the com-
4 pany, in an equal amount, payable to the city, condi-
5 tioned that the company will duly pay the interest on
6 said scrip, and will provide for the re-imbusement of

7 the principal thereof, and hold the city harmless on
8 account of the issue of the same, according to the pro-
9 visions of this act.

SECT. 7. The directors shall also, if required by the
2 mayor and aldermen of the city, transfer to the city,
3 upon the delivery of any portion of the scrip as afore-
4 said, an equal amount in the shares of the company,
5 to be held as collateral security for the bond of the
6 company, required to be given in such case. And
7 the shares so held as collateral shall be credited on
8 the stock books of the company as fully paid up, and
9 no assessments shall ever be required thereon, nor
10 shall any dividends be paid on the same, nor any right
11 of acting or voting at the meetings of the company be
12 claimed or exercised by reason of said shares, so long
13 as the same shall be held as collateral as aforesaid.
14 But the city shall not be taken and held as a stock-
15 holder in the company by reason of the transfer of
16 shares for the purposes aforesaid.

SECT. 8. From and after the issue and delivery of
2 any portion of the scrip aforesaid, the city shall have
3 a lien upon the said railroad, and upon all the pro-
4 perty and franchise of the company, to secure the per-

5 formance of the conditions of all the bonds of the
6 company, executed and delivered under the provisions
7 of this act.

SECT. 9. For the purpose of providing for the re-
2 imbursement of the principal of the scrip authorized
3 to be issued by this act, there shall be established a
4 sinking fund, and commissioners shall be appointed to
5 manage the same.

6 One of said commissioners shall be appointed by
7 the mayor and aldermen of the city, and one by the
8 directors of the company, and in case of a vacancy in
9 the place of either, the same shall be supplied by the
10 mayor and aldermen, or by the directors, respectively.
11 Both of said commissioners shall be appointed and
12 qualified before the delivery to the directors of any of
13 the scrip. The commissioners shall be severally
14 sworn to the faithful discharge of the duties enjoined
15 upon them by this act, in presence of the city clerk,
16 who shall make a certificate and record thereof as in
17 the case of the qualification of city officers. Each of
18 the commissioners shall give a bond to the city, with
19 satisfactory sureties, in the penal sum of ten thousand
20 dollars, conditioned for the faithful discharge of his

21 duty as commissioner. They shall receive such com-
22 pensation as may be established by the directors,
23 which shall be paid to them by the company, and shall
24 not be diminished during their continuance in office.

SECT. 10. Whenever the directors shall receive any
2 portion of the scrip, authorized as aforesaid to be de-
3 livered to them, they shall pay to the city treasurer
4 two per cent. of the amount of the scrip so delivered,
5 which amount shall be, by the city treasurer, placed
6 to the credit of the commissioners of the sinking fund,
7 and shall constitute a part of said fund. The direc-
8 tors shall also, annually, in the month of April, pay to
9 the city treasurer, from the income of the road, one
10 per cent. of the whole amount of scrip which shall
11 have been, before that time, issued and delivered, and
12 which shall be then outstanding; but after the expi-
13 ration of five years from the time of the delivery and
14 receipt of the scrip authorized by this act, the said
15 annual payments from the income of the road shall be
16 increased to one and a half per cent. of the amount
17 of the scrip, then outstanding as aforesaid, and the
18 said annual payments of one per cent. for five years
19 and one and a half per cent. annually thereafter, shall

20 be successively placed to the credit of the commission-
21 ers of the sinking fund, and shall constitute a part of
22 said fund.

SECT. 11. The commissioners shall have the care
2 and management of all the moneys invested, and the
3 securities shall be in the custody of the city treasurer,
4 who shall be, by virtue of his office, treasurer of the
5 sinking fund, and shall be responsible, on his official
6 bond to the city, for the safe keeping of the moneys
7 and securities of the fund. He shall pay out and
8 deliver any of the said moneys and securities only
9 upon the warrant of the commissioners.

SECT. 12. The commissioners shall from time to
2 time, at their discretion, invest the moneys on hand,
3 securely, so that they shall be productive, and the
4 same may be loaned on mortgage of real estate, or to
5 any county, or upon pledge of the securities of any
6 county in this State, or invested in the stock of this
7 State or of the United States, or in the stock of any
8 railroad company in New England, whose road is
9 completed, and whose capital has been wholly paid
10 in. Any portion of the fund may be invested in the city
11 scrip authorised by this act, and such scrip shall not

12 thereby be extinguished, but shall be held by the com-
13 missioners, like other investments, for the purposes of
14 the fund. An amount not exceeding ten per cent. of
15 the fund may be loaned on pledge of the stock of any
16 bank, or of any stock insurance company in this State.
17 And the commissioners may from time to time, sell
18 and transfer any of said securities.

SECT. 13. The sinking fund, and all the sums which
2 shall be added thereto by accumulation upon the in-
3 vestments thereof, shall be reserved and kept invio-
4 late for the redemption and reimbursement of the prin-
5 cipal of said scrip at the maturity thereof, and shall be
6 applied thereto by the commissioners.

SECT. 14. Any of the shares in the stock of the rail-
2 road company, held by the city as collateral, may be
3 sold and transferred by direction of the commissioners
4 of the sinking fund, with the consent of the direct-
5 ors of the railroad company, whenever an exchange
6 thereof can be advantageously made for any of the
7 city scrip, authorized by this act, or whenever the said
8 scrip can be advantageously purchased with the pro-
9 ceeds of any such sale of such collateral shares. And
10 the scrip so purchased or taken in exchange shall

11 be thereupon cancelled and extinguished, and the
12 amount thereof shall be endorsed on the respective
13 bonds of the railroad company given on the issue and
14 delivery of such scrip. But no part of the sinking fund,
15 or of its accumulations, shall be applied at any time
16 or in any manner to the redemption and extinguish-
17 ment of the scrip before maturity thereof.

SECT. 15. If the directors of the railroad company
2 shall at any time, fail to pay to the city treasurer, for
3 the sinking fund, the amount aforesaid of one per cent.
4 or of one and a half per cent. required to be paid into
5 the sinking fund, out of the income of the road, the
6 commissioners are authorized, at their discretion,
7 upon such notice to the company as they shall deem
8 suitable, to sell so many of such collateral shares as
9 may be necessary to produce the amount of such de-
10 ficiency, and the proceeds of such sale shall thereupon
11 be paid into the sinking fund, and shall be applied to
12 the purposes thereof. And all conveyances and trans-
13 fers of such collateral shares shall be made by the
14 city treasurer, under the direction of the commission-
15 ers of the fund, in pursuance of the provisions of this
16 act.

SECT. 16. The commissioners shall keep a true
2 record of all their proceedings and an account of all
3 the sums paid into the fund, and of the investments
4 made of the same, and shall annually in the month of
5 July report to the mayor and aldermen and to the
6 directors of the railroad company, their proceedings
7 for the year, the amount and condition of the fund and
8 the income of the several parts thereof. And their
9 records and the accounts of the fund, and the securi-
10 ties belonging thereto, shall at all times be open to
11 inspection by such committee as may be appointed
12 for that purpose by the mayor and aldermen or by the
13 directors of the company.

SECT. 17. To secure the faithful discharge of the
2 several trusts confided to the said commissioners
3 under this act, the supreme judicial court is hereby
4 empowered, upon the complaint of the mayor and
5 aldermen or of the directors of the railroad company,
6 against the said commissioners, or either of them,
7 concerning any of said trusts and duties, by summary
8 process, according to the course of proceedings in
9 equity, to hear and adjudge upon the matter of such
10 complaint, and to issue thereon, any suitable writ or

11 process, and make any proper decree to compel the
12 appropriate discharge and performance of such trusts
13 and duties, and to remove the said commissioners, or
14 either of them; and in case of such removal, the va-
15 cancy shall be immediately supplied, as provided in
16 the ninth section of this act.

SECT. 18. If the said sinking fund with its accumu-
2 lations shall at any time exceed the amount of the
3 scrip unredeemed and outstanding, issued under this
4 act, all such excess shall be annually paid over to the
5 railroad company; and if any surplus of the fund shall
6 remain after the redemption and reimbursement of
7 all the said scrip, such surplus shall be paid over to
8 the company. And the mayor and aldermen may
9 from time to time, cause to be reconveyed to the rail
10 road company such parts of the stock transferred to
11 the city under this act, as they may deem not to be
12 required for the securities herein provided. Upon
13 the final completion of all the duties enjoined upon
14 the commissioners under this act, their records and
15 accounts shall be deposited with the railroad company.

SECT. 19. For the purpose of securing and enforc-
2 ing the lien granted to the city by the eighth section

3 of this act, the directors of the company are hereby
4 authorized, and it shall be their duty, whenever
5 thereby directed by the mayor and aldermen, to exe-
6 cute and deliver to the city of Bangor a mortgage of
7 said railroad and of all its property, real and personal,
8 and of the franchise of the company. Such mortgage
9 shall be signed by the president of the company in his
10 official capacity, and shall be executed according to
11 the law of this State, and shall be of due and legal
12 form, and shall contain apt and sufficient terms for
13 the security of the city against any liabilities then ex-
14 isting or which may thereafter be incurred in pursu-
15 ance of this act. The record of such mortgage in
16 the registry of deeds for Penobscot county shall be a
17 sufficient registry thereof to all intents and purposes
18 within this State. If any portion of the railroad shall
19 not have been completed at the time of the execution
20 of such mortgage, the directors shall be held when-
21 ever thereto requested, as aforesaid, to execute and
22 deliver other like mortgages of any other portion of
23 the road and property, as may be from time to time
24 required, and such further mortgage shall be subject
25 to like provisions, and shall have like operation as is
26 hereinbefore prescribed.

SECT. 20. If the directors of the company shall
 2 neglect or refuse to execute and deliver any such
 3 mortgage after request as aforesaid, the mayor and
 4 aldermen may cause a suit in equity to be instituted
 5 in the name of the city to compel the due execution
 6 and delivery thereof. The supreme judicial court for
 7 the county of Penobscot, shall have jurisdiction of
 8 such suit, and shall hear and determine the same, by
 9 summary process, in their discretion, and shall make
 10 such decree therein as may be suitable to effect the
 11 purposes herein required.

SECT. 21. For the purpose of foreclosing any such
 2 mortgage upon the property and franchise of the com-
 3 pany, it shall be sufficient for the mayor and alder-
 4 men to give notice according to the mode prescribed
 5 in the fifth section of the one hundred and twenty-
 6 fifth chapter of the revised statutes, which notice may
 7 be published in a newspaper printed in the city of
 8 Bangor, and record thereof may be made within
 9 thirty days after the date of the last publication, in the
 10 registry of deeds for the county of Penobscot, which
 11 publication and record shall be sufficient for the pur-
 12 poses of such foreclosure. Upon the expiration of
 13 three years from and after such publication, if the
 14 conditions of such mortgage shall not within that time

15 have been performed, the foreclosure shall be com-
16 plete, and shall make the title to all the property and
17 franchise aforesaid absolute in the city of Bangor.
18 And any transfer of any of the personal property of
19 the company, made after publication of such notice
20 to foreclose, without the consent of the mayor and
21 aldermen, shall be wholly void ; but lawful transfers
22 and changes of any of the personal property of the
23 company, not including the franchise, and the rails
24 actually laid and the right of way, may be made, not-
25 withstanding such mortgage, before publication of
26 notice to foreclose as aforesaid; and all personal prop-
27 erty acquired by the company, by purchase, exchange
28 or otherwise, after the execution and delivery of any
29 such mortgage, shall be covered and held thereby.

SECT. 22. If the directors of the company shall at
2 any time neglect or omit to pay the interest which
3 may become due upon any portion of the scrip issued
4 and delivered under the provisions of this act, or to
5 make the annual payments, thereby required for the
6 sinking fund, the city of Bangor may take actual pos-
7 session in the manner hereinafter provided, of the
8 railroad, of all the property, real and personal of the
9 company and of the franchise thereof, and may hold
10 the same and apply the income thereof to make up

11 and supply such deficiencies of interest and amounts
12 payable for the sinking fund, and all further deficien-
13 cies that may occur, while the same are so held, un-
14 til such deficiencies shall be fully made up and dis-
15 charged. A written notice signed by the mayor and
16 aldermen or by a majority of their number, and served
17 upon the president or treasurer or any director of the
18 company, or if there are none such, upon any stock-
19 holder in the company, stating that the city thereby
20 takes actual possession of the railroad, and of the
21 property and franchise of the company, shall be a
22 sufficient actual possession thereof, and shall be a
23 legal transfer of all the same for the purposes afore-
24 said to the city, and shall enable the city to hold the
25 same against any other transfers thereof and against
26 any other claims thereon until such purposes have
27 been fully accomplished. Such possession shall not
28 be considered as an entry for foreclosure, under any
29 mortgage hereinbefore provided, nor shall the rights
30 of the city or of the company under such mortgage be
31 in any manner affected thereby.

SECT. 23. All moneys by or for the railroad com-
2 pany, after notice as aforesaid, from any source what-
3 ever, and by whomsoever the same may be received,
4 shall belong to and be held for the use and benefit of

5 the city, in the manner, and for the purposes herein
6 provided, and shall, after notice given to persons re-
7 ceiving the same, respectively, be by them paid to the
8 city treasurer, which payment shall be an effectual
9 discharge from all claims of the company therefor ;
10 but if any person, without such notice, shall make
11 payment of moneys so received to the treasurer of the
12 company, such payment shall be a discharge of all
13 claims of the city therefor. All moneys received by
14 the treasurer of the company, after such notice, or in
15 his hands at the time such notice may be given, shall
16 be by him paid to the city treasurer, after deducting
17 the amount expended, or actually due for the running
18 expenses of the road, for the salaries of the officers of
19 the company, and for repairs necessary for conducting
20 the ordinary operations of the road. Such payments
21 to the city treasurer shall be made at the end of every
22 calendar month, and shall be him applied to the pay-
23 ment of the interest due as aforesaid, and placed to
24 the credit of the commissioners of the sinking fund,
25 in the amounts required by the provisions of this act.
26 And any person who shall pay or apply any moneys
27 received as aforesaid in any manner contrary to the
28 foregoing provisions, shall be personally liable there-
29 for, and the same may be recovered in an action for

30 money had and received, in the name of the city
31 treasurer, whose duty it shall be to sue for the same,
32 to be by him held and applied as is herein required.

SECT. 24. For the purpose of effecting the objects
2 prescribed in the two preceding sections, the mayor
3 and aldermen may cause a suit in equity to be insti-
4 tuted in the name of the city of Bangor, in the su-
5 preme judicial court, in the county of Penobscot,
6 against the railroad company, its directors, and any
7 other person, as may be necessary, for the purpose of
8 discovery, injunction, account or other relief under
9 the provisions of this act. And any judge of the court
10 may issue a writ of injunction or any other suitable
11 process on any such bill, in vacation or in term time,
12 with or without notice, and the court shall have juris-
13 diction of the subject matter of such bill, and shall have
14 such proceedings and make such orders and decrees,
15 as may be within the powers and according to the
16 course of proceedings of courts of equity and as the
17 necessities of the case may require.

SECT. 25. If the railroad company shall after notice
2 of possession as aforesaid, neglect to choose directors
3 thereof or any other necessary officers, or none such
4 shall be found, the mayor and aldermen of the city
5 shall appoint a board of directors, consisting of not less

6 than seven persons, or any other necessary officers, and
7 the persons so appointed shall have all the power and
8 authority of officers chosen or appointed under pro-
9 visions of the act establishing said company, and upon
10 their acceptance of such offices, shall be subject to
11 all the duties and liabilities thereof.

SECT. 26. This act shall take effect from and after
2 its approval by the governor, so far as to empower
3 the directors of the railroad company and the inhabi-
4 tants of the city to act upon the question of accepting
5 the same. The several ward meetings of the inhabi-
6 tants for that purpose shall be called and holden with-
7 in sixty days after such approval. And if the act shall
8 be accepted as aforesaid, then after such acceptance
9 and record thereof, all the parts of the act shall take
10 effect and be in full force.

STATE OF MAINE.

IN SENATE, Feb. 18, 1852.

ORDERED, That 350 copies of the foregoing Bill, (reported from the Committee on Railroads and Bridges,) be printed for the use of the Legislature.

ALBERT H. SMALL, *Secretary.*