

MAINE STATE LEGISLATURE

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Seventy-first Legislature.

HOUSE.

No. 24

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND THREE.

AN ACT to enlarge the powers of the Berwick, Eliot and York
Street Railway.

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

Section 1. The Berwick, Eliot and York Street Railway,
2 is hereby authorized to buy, lease and use the properties and
3 franchises hereinafter named and referred to and to exercise
4 the powers conferred by this act.

Sect. 2. The said corporation is authorized to hold for its
2 purposes aforesaid so much real and personal estate in this
3 State and in the state of New Hampshire as may be neces-
4 sary and convenient therefor.

Sect. 3. The said corporation is hereby authorized to pur-
2 chase or lease the property, capital, stock, rights, privileges,
3 immunities, and franchises of the Berwick and South Ber-

4 wick Street Railway, the Portsmouth, Kittery and York
5 Street Railway, the Kittery and Eliot Street Railway Com-
6 pany, and the Eliot Bridge Company, or either of them upon
7 such terms as may be agreed upon. And upon such pur-
8 chase or lease the said Berwick, Eliot and York Street Rail-
9 way shall have, hold, possess, exercise and enjoy all the
10 locations, powers, privileges, rights, immunities, franchises,
11 property and assets which at the time of such transfer shall
12 then be had, held and possessed or enjoyed by the corpo-
13 ration so selling or leasing, or either of them, and shall be
14 subject to all the duties, restrictions and liabilities to which
15 they or either of them shall then be subject by reason of any
16 charter, contract or general or special law or otherwise.

Sect. 4. The Berwick and South Berwick Street Railway,
2 the Portsmouth, Kittery and York Street Railway, the Kit-
3 tery and Eliot Street Railway Company, and the Eliot Bridge
4 Company are authorized to make the sales, transfers and
5 leases authorized by section three of this act.

Sect. 5. The Berwick, Eliot and York Street Railway is
2 further authorized, with the consent of the legislature of
3 New Hampshire, to purchase or lease the property, capital
4 stock, rights, privileges, immunities and franchises of the
5 Dover and Eliot Street Railway, and of the Eliot Bridge
6 Company, a corporation incorporated under the laws of New
7 Hampshire, or of either of them upon such terms as may be
8 agreed upon, and upon such purchase or lease the said Ber-
9 wick, Eliot and York Street Railway shall in such manner as
10 may be permitted by the legislature of New Hampshire, have,
11 hold, possess, exercise and enjoy all the locations, powers,
12 privileges, rights, immunities, franchises, property and assets
13 which at the time of such transfer shall then be had, held and
14 possessed or enjoyed by the corporation so selling or leasing
15 or either of them, and shall be subject to all the duties,
16 restrictions or liabilities to which they or either of them shall

17 then be subject by reason of any charter, contract or general
18 or special law or otherwise, severally in such manner and
19 under such appropriate conditions and limitations as may be
20 imposed by the legislature of the state of New Hampshire.

Sect. 6. All proceedings, suits at law or in equity which
2 may be pending at the time of such transfers to which either
3 of the corporations named in section three may be a party,
4 may be prosecuted or defended by the said Berwick, Eliot
5 and York Street Railway in like manner and with like effect
6 as if such transfer had not been made. All claims, contracts,
7 rights and causes of action of or against either of the said
8 corporations so selling or leasing, at law or in equity, may be
9 enforced by suit or action to be begun or prosecuted by or
10 against the said Berwick, Eliot and York Street Railway.

Sect. 7. When the transfers authorized by this act are
2 carried out and fully completed, the Berwick, Eliot and York
3 Street Railway shall be liable for the then legally existing
4 debts and obligations of each and all of the companies so
5 making such transfers.

Sect. 8. The said Berwick, Eliot and York Street Railway
2 may issue its stock and bonds in payment and exchange of
3 the stock, bonds, franchises and roerty of the corporations
4 making the transfers authorized by this act, in such manner
5 and in such amounts as may be agreed upon.

Sect. 9. The said Berwick, Eliot and York Street Railway
2 is hereby authorized to sell or lease its property and fran-
3 chises to any street railroad company whose lines as con-
4 structed or chartered would form connecting or continuous
5 lines with the lines of said Berwick, Eliot, and York Street
6 Railway as constructed or chartered, and in such case the
7 corporation so purchasing or leasing such property or fran-
8 chises shall be entitled to all the privileges and be subject to
9 all appropriate conditions and limitations contained in the
10 charter and franchises of said Berwick, Eliot and York Street

11 Railway. Any street railway company, whose lines as con-
12 structed or chartered would form connecting or continuous
13 lines with the lines of the said Berwick, Eliot and York Street
14 Railway, as constructed or chartered is hereby authorized to
15 so purchase or lease the property and franchises of the said
16 Berwick, Eliot and York Street Railway. Nothing in this
17 section contained shall apply to any property or franchises
18 within the state of New Hampshire except as may be author-
19 ized by the legislature of said State by appropriate general
20 or special law.

Sect. 10. The said Berwick, Eliot and York Street Rail-
2 way is farther authorized to acquire by lease, purchase or
3 otherwise the lines, property and franchises of any street
4 railroad or street railroads whose lines as constructed or
5 chartered would form connecting or continuous lines with
6 the lines of the said Berwick, Eliot and York Street Railway,
7 as constructed or chartered, and in such case the Berwick,
8 Eliot and York Street Railway shall be entitled to all the
9 privileges and be subject to all appropriate conditions and
10 limitations contained in the charters and franchises then
11 acquired. Any street railway company whose lines as con-
12 structed or chartered would form connecting or continuous
13 lines with the lines of the Berwick, Eliot and York Street
14 Railway, as constructed or chartered, is hereby authorized to
15 lease or sell its lines, property and franchises as in this sec-
16 tion authorized. Nothing in this section shall apply to any
17 street railroad company or to any property and franchises
18 within the state of New Hampshire except as may be lawful
19 under the general or special laws of that state.

Sect. 11. The said Berwick, Eliot and York Street Rail-
2 way may, for the purposes of sections nine and ten, or either
3 of them, issue such additional stock as may be necessary
4 therefor, likewise such additional bonds as may be required
5 for the purposes of said sections or of either of them and

6 secure the said bonds by appropriate mortgages upon its
7 franchises and property, and thereafterwards issue its stock
8 and bonds, or either of them, in payment and exchange for
9 the stock, bonds, franchises and property of any corporation
10 making transfers under sections nine and ten, in such man-
11 ner and in such amounts as may be agreed upon.

Sect. 12. The Berwick, Eliot and York Street Railway is
2 further authorized to cross tide waters and navigable waters
3 within the limits of any or all the towns within which the
4 aforesaid railroads are built or authorized, upon existing
5 bridges or upon bridges or structures of said company
6 erected therefor, provided, however, that said company shall
7 not unnecessarily obstruct navigation, and that the manner
8 and conditions of its so crossing said waters upon any
9 bridges, and of its erecting and maintaining any such bridges
10 or structures of its own shall first be determined by the
11 municipal officers of the town or towns within the limits of
12 which said bridge or structure shall be so erected, maintained
13 or used, and if said company and such municipal officers shall
14 disagree as to the terms prescribing the manner and con-
15 ditions of such crossing or of erecting and maintaining any
16 such bridge or structure, the same shall after notice and hear-
17 ing be determined by the railroad commissioners and their
18 decree thereon shall be final.

Sect. 13. In the event of the purchase or lease of the plant,
2 property and franchises of the Eliot Bridge Company, the
3 said Berwick, Eliot and York Street Railway shall thereupon
4 be authorized to construct, operate and maintain a street rail-
5 road upon the said bridge so acquired, first strengthening the
6 same to the satisfaction of the railroad commissioners, or,
7 if it so elects it may widen the same or erect an independent
8 structure alongside thereof in a manner not inconsistent with
9 the requirements and conditions of the charter of the said
10 Eliot Bridge Company, and all work so done shall be subject

11 to the approval of said railroad commissioners. It may in
12 so doing erect such piers or other structures as may be by it
13 deemed necessary and convenient to the use of said bridge,
14 but nothing in this section shall be construed as permitting
15 said company to obstruct navigation through or at said bridge
16 to an extent greater than is authorized by law at the time of
17 such sale or lease.

Sect. 14. The Berwick, Eliot and York Street Railway,
2 is hereby authorized to construct, operate and maintain from
3 the terminus of the Kittery and Eliot Street Railway Com-
4 pany, as now built, to some convenient point on the line of
5 the said Berwick, Eliot and York Street Railway as now
6 located or built, a street railroad for street traffic for the con-
7 veyance of persons and property along and upon said streets,
8 roads and ways, and over and across such lands as said com-
9 pany may deem best for public convenience, with such single
10 or double tracks, sidetracks, switches, turnouts, stations and
11 appurtenances, and with such poles, wires and appliances as
12 shall be reasonably convenient in the premises, with all the
13 powers and privileges incident to or usually granted to sim-
14 ilar corporations.

Sect. 15. The municipal officers of the town or towns in
2 which the extension authorized in section fourteen shall be
3 built shall determine the distance from the sidewalks or from
4 the side lines of the streets at which the rails of said company
5 shall be laid. The railway company or any person interested
6 may at any time appeal from such determination to the board
7 of railroad commissioners who shall upon notice hear the
8 parties and finally determine the questions raised by said
9 appeal. In case said Berwick, Eliot and York Street Rail-
10 way makes any extensions, additions or variations from the
11 lines of the Portsmouth, Kittery and York Street Railway,
12 or under any other franchise by it hereafter acquired created
13 by special act of the legislature, it shall be competent for the
14

15 railway company or any person interested to at any time
16 appeal from any determination or order of the municipal
17 officers of any town determining the distance from the side-
18 walks or the side lines of the streets, of the proposed location
19 of the rails of said company to the board of railroad com-
20 missioners, who shall upon notice hear the parties and finally
21 determine the questions raised by said appeal.

Sect. 16. All the said railroad lines to be operated, con-
2 structed or maintained under this act shall be constructed and
3 maintained in such form and manner and with such rails and
4 upon such grade as the municipal officers of the towns where
5 the same are located may direct. Such municipal officers
6 shall have power at all times to make such regulations as to
7 the mode of use of any such tracks, the rate of speed and the
8 removal and disposal of snow and ice from the streets, roads
9 and ways as the public safety and convenience may require.
10 The said railroad company may at any time appeal from any
11 such determination, decrees, rules and regulations made and
12 established under this section, to the board of railroad com-
13 missioners who shall, upon notice hear the parties and finally
14 determine the questions raised by said appeal.

Sect. 17. Whenever the said Berwick, Eliot and York
2 Street Railway requires additional land for the purpose of
3 improving the alignment of any part of the road by it to be
4 built or acquired under this act, or if it requires additional
5 land for double tracking its road to be built or acquired here-
6 under, and is unable to obtain the same by agreement with
7 the owner, it may apply in writing to the railroad commis-
8 sioners, describing the land required for either or both of
9 said purposes, and naming the persons interested; the com-
10 missioners shall thereupon appoint a time for hearing near
11 the premises and requiring notice to be given all persons inter-
12 ested, as they may direct, fourteen days at least before said
13 time; and shall then view the premises, hear the parties and

14 determine how much if any of said real estate is required for
15 either or both of said purposes. If they find that any of it
16 is so required they shall furnish the corporation with a certi-
17 ficate containing a definite description thereof, and when it
18 is filed with the clerk of courts in the county where the land
19 lies it shall be deemed and treated as taken for public uses:
20 provided, however, that where land is held by a tenant for
21 life and the reversion is contingent as to the persons in whom
22 it may vest on the termination of the life estate, such fact
23 shall be stated in the application and the commissioners shall,
24 in addition to the notice to the tenant for life, give notice by
25 publication to all others interested, in such manner as they
26 deem proper. In taking such land the corporation shall be
27 subject to the provisions of section seventeen of chapter fifty-
28 one, of the Revised Statutes, but the damages therefor shall
29 be estimated and paid in the manner hereinafter provided by
30 section twenty of this act. Lands to be taken hereunder shall
31 be subject to the exceptions mentioned in section nineteen.

Sect. 18. Before beginning construction of the extension
2 authorized by section fourteen, the said company shall first
3 file with the clerk of the county commissioners for York
4 county a copy of its location, defining its courses, distances
5 and boundaries, accompanied with a map of the proposed
6 route on an appropriate scale, and a like copy and map shall
7 be filed with the board of railroad commissioners.

Sect. 19. The said Berwick, Eliot and York Street Railway,
2 for the location, construction and convenient use of the road
3 authorized by section fourteen hereof, and for the location,
4 construction and convenient use of any extensions, additions
5 to or variations from the railroad lines by it to be acquired
6 hereunder, or in the location, construction and convenient
7 use of any of the lines of railroad to be built under the fran-
8 chises to be by it acquired hereunder may, for improving the
9 alignment of its road, for changing the grades thereof, for

10 any main track line, switches, turnouts, side tracks, stations,
11 car barns, gravel pits or power houses, purchase or take and
12 hold as for public uses any land and all materials in and
13 upon it, except meeting houses, dwelling houses, private or
14 public burying grounds or lands already devoted to any rail-
15 road use, and may excavate or construct in, through or over
16 such land to carry out its purposes, but the land so taken for
17 its main track line, turnouts, switches and side tracks shall
18 not exceed four rods in width unless necessary for excavation
19 and embankment or materials. All lands so taken, except
20 for its main track line, turnouts, switches and side tracks,
21 shall be subject to the provisions of section sixteen, chapter
22 fifty-one, of the Revised Statutes. It may enter upon any
23 such lands to make surveys and locations, and plans of all
24 locations and land so taken shall be filed with the clerk of
25 courts in the county of York, and when so filed such land
26 shall be deemed and treated as taken.

Sect. 20. For the purpose of determining the damages to
2 be paid for lands taken under this act the land owner or said
3 company may, within three years after the filing of such
4 plans and locations with the clerk of courts as hereinbefore
5 provided, apply to the commissioners of said county of York
6 and have such damages assessed as is provided by law
7 wherein land is taken for railroads, so far as the same is con-
8 sistent with the provisions of this charter, and where incon-
9 sistent or at variance with this charter, the charter shall con-
10 trol. The said commissioners shall have the same power to
11 make suitable orders relative to cattle guards, cattle passes
12 and farm crossings, as in the case of railroads. If the com-
13 pany shall fail to pay such land owner or to deposit for his
14 use with the clerk of the county commissioners such sum as
15 may be finally awarded for damages, with costs, within ninety
16 days after final judgment, said location shall be invalid and

17 the company forfeit all right under the same. If such land
18 owner secures more damages than were tendered by said
19 company he shall recover costs, otherwise the company shall
20 recover costs. In case the company shall begin to occupy
21 said lands before rendition of final judgment the land owner
22 may require said company to file its bond with said commis-
23 sioners in such sum and with such securities as they may
24 approve, conditioned for such payment or deposit; failure to
25 apply for damages within the said three years by said land
26 owner shall be held to be a waiver of the same. No action
27 shall be brought against such company for such taking and
28 occupation of land until after such failure to pay or deposit.

Sect. 21. The said Berwick, Eliot and York Street Rail-
2 way may issue its bonds from time to time as may be deemed
3 expedient, and in such amounts as may be required for the
4 purposes of this act, and secure the same by appropriate
5 mortgages upon its franchise and property.

Sect. 22. The locations of rails, posts, wires and fixtures
2 within the limits of any street, road or way, as now estab-
3 lished by any or all of the street railroad companies author-
4 ized to sell their properties and franchises under this act, are
5 hereby confirmed and made valid.

Sect. 23. The said Berwick, Eliot and York Street Rail-
2 way shall, except as modified by this act, have all the rights
3 and privileges conferred by general law upon street railroad
4 corporations, and be subject to the conditions, restrictions
5 and limitations thereby imposed.

Sect. 24. The said Berwick, Eliot and York Street Rail-
2 way is hereby authorized to accept such franchises, powers
3 and privileges as may be conferred upon it by the legislature
4 of the state of New Hampshire, and to perform such acts
5 within said state as may be required or permitted by the said
6 legislature, and this act shall be read and construed as if the
7 several rights and franchises granted by this State and by

8 the legislature of New Hampshire had been included in and
9 granted as a whole by this act.

Sect. 25. The said Berwick, Eliot and York Street Rail-
2 way is hereby authorized to change its name to the Ports-
3 mouth, Dover and York Street Railway and upon so doing it
4 shall file a certificate thereof in the offices of the secretary of
5 state in this State, and in New Hampshire and a like certi-
6 ficate with the railroad commissioners of said states.

Sect. 26. This act shall take effect when approved.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES,

AUGUSTA, January 29, 1903.

Reported by Mr. SUTHERLAND of Biddeford, from Committee on Railroads, Telegraphs and Expresses, and ordered printed under joint rules.

W. S. COTTON, *Clerk.*