

MAINE STATE LEGISLATURE

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SEVENTY-SIXTH LEGISLATURE

HOUSE

NO. 119

House of Representatives, Feb. 3, 1913.

*Tabled pending reference to a committee, by Mr. Sanborn
of Portland, and ordered printed.*

W. R. ROIX, Clerk.

STATE OF MAINE

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

AN ACT to provide for the Reconstruction of Portland Bridge.

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

Section 1. Immediately upon the going into effect of this
2 act the county commissioners of Cumberland county shall
3 proceed to procure plans and specifications for the recon-
4 struction and extension of the present bridge across Port-
5 land harbor in Cumberland county known as Portland
6 bridge, according to the terms of this act, from such engi-
7 neer or engineers as they may see fit to employ and, sub-
8 ject to the limitations of this act, shall determine the loca-
9 tion, character and material of the construction and exten-
10 sion of said bridge.

Sect. 2. The said county commissioners for the purpose
2 of reconstructing and extending said bridge are hereby
3 authorized and empowered to acquire by purchase or to
4 take by right of eminent domain, upon payment of just com-
5 pensation therefor, any real estate or interest therein, rights
6 of way or other rights, for and in behalf of said county, as
7 may be necessary for the construction and extension of
8 said bridge and the approaches thereto in manner as afore-
9 said, or for the safe and proper maintenance thereof, and
10 for such purposes may also acquire by purchase or take by
11 right of eminent domain, upon payment of just compensa-
12 tion therefor, land on either side of and adjoining any high-
13 ways, Cape Elizabeth crossing, so called, the said ap-
14 proaches and bridge, though covered with water or flowed
15 by the tide, and fill the same, provided it can be done with-
16 out obstructing navigation. In exercising any right of
17 eminent domain conferred upon it by this act, said county
18 of Cumberland by and through its said county commis-
19 sioners, shall file in the registry of deeds in said county
20 certified copies of the plans of the location of all lands or
21 interests therein, rights of way, or any other rights so taken,
22 together with an appropriate description thereof, and the
23 names of the owners, if known; and no entry shall be made
24 on any land except to make surveys as aforesaid until the
25 expiration of ten days from such filing, whereupon posses-
26 sion may be had of all said lands and interests therein,
27 rights of way, or any other rights so taken, but title there-

28 to shall not vest in said county until payment therefor.
29 With such plan the said county, through its said county
30 commissioners, may file a statement of the damages it is
31 ready to pay to any owner for any property so taken, and
32 if the amount finally awarded does not exceed the same,
33 the county shall recover costs against such owner; other-
34 wise such owner shall recover costs against the county.
35 When for any reason the county fails to acquire the prop-
36 erty authorized to be taken and which is described in such
37 location, or the location recorded is defective or uncertain,
38 it may at any time correct and perfect such location, and
39 file a new description thereof; and in such case the county
40 shall be liable in damages only for the property for which
41 the owner had not previously been paid, to be assessed as
42 of the time of the original taking, and the county shall not
43 be liable for any acts which would have been justified if
44 the original taking had been lawful.

Sect. 3. Said county of Cumberland shall be held liable
2 to pay all damages that shall be assessed in favor of any
3 person, partnership or corporation by the taking of any
4 real estate or interest therein, rights of way or any other
5 rights or property as aforesaid, and if such person, partner-
6 ship or corporation sustaining damages as aforesaid shall
7 not agree with said county upon the sum to be paid there-
8 for, either party on petition to a justice of the supreme
9 judicial court within six months after said plans are filed,
10 may have such damages assessed by a board of three ap-

11 praisers to be appointed by said justice, and subsequent
12 proceedings and rights of appeal thereon shall be had in
13 the same manner and under the same restrictions, condi-
14 tions and limitations as are by law prescribed in the case
15 of damages by the laying out of highways.

Sect. 4. As soon as such plans and specifications have
2 been adopted and the location, character and material of the
3 construction and extension of said bridge has been deter-
4 mined as provided in section one hereof, the said county
5 commissioners for and in behalf of said county of Cum-
6 berland, are hereby authorized, empowered and directed to
7 construct and extend said Portland bridge, so called, con-
8 necting the cities of South Portland and Portland in said
9 county across said Portland harbor and shall extend the
10 same from a convenient point on Ocean street in said South
11 Portland to York street in said Portland, conforming sub-
12 stantially as to direction with the present location of Port-
13 land Bridge, Cape Elizabeth Crossing, so called, and Brack-
14 ett street in said Portland. Said bridge shall be of substan-
15 tially uniform grade throughout its entire length, and shall
16 cross the tracks of the Portland Terminal Company at an
17 elevation which shall meet the present grade of said York
18 street, the same to be forever thereafter considered and
19 maintained as a county way.

Sect. 5. Said bridge shall be constructed of steel, masonry
2 or concrete or from a combination of steel, masonry and
3 concrete with filling wherever said county commissioners

4 may deem practicable, and shall have a road-way of not
5 less than sixty (60) feet in width, including a sidewalk for
6 pedestrians on at least one side. A draw in said bridge
7 shall be constructed with a clear opening of not less than
8 seventy (70) feet in width in such part and in such manner
9 with suitable dolphins and other necessary and appurtenant
10 structures for the operation of the same as shall meet the
11 requirements of the several acts of Congress and the regu-
12 lations of the War Department of the United States relat-
13 ing to draws and draw bridges over and across tide waters.
14 Said bridge shall be of sufficient strength, in addition to
15 the amount of travel which it will reasonably be required
16 to accommodate, to allow its use by such railroads operated
17 by electricity or other motive power as may obtain permis-
18 sion to use the same under the terms of this act. For the
19 purpose of providing for the safety and convenience of
20 public travel between said cities of South Portland and
21 Portland during the construction of said bridge, said county
22 commissioners are hereby further authorized and empow-
23 ered to construct and maintain such temporary bridge or
24 bridges as they deem necessary.

Sect. 6. Said county commissioners are hereby authorized
2 and empowered at their discretion to remove the present
3 bridge known as Portland bridge, or any part thereof, and
4 make use of or dispose of the material therein contained in
5 whatever manner they deem for the best interest of the
6 county of Cumberland.

Sect. 7. Said county commissioners are further authorized and empowered from time to time to lay and construct ducts or conduits for wires and cables beneath the surface of the highways and approaches to said bridge and through the abutments, and beneath or along the sides of said bridge and across the ship channel, under the draw of said bridge and beneath the bed, in such manner as not to obstruct navigation, and as shall be approved by the United States engineer for the District of Maine, and construct suitable man holes or openings in said highways and approaches, to admit of access to said ducts or conduits, and if said county commissioners shall construct ducts or conduits of sufficient capacity, all telephone, telegraph and electric lighting and power companies, and all other public or private corporations or individuals desiring to cross said railroad tracks of said Portland Terminal Company and said harbor, with wires and cables, at the point where said bridge crosses, unless permission has been granted them to construct ducts or conduits of their own, under this act, shall place their wires or cables within the said ducts or conduits; except that any electric railroad using said bridge may, upon permission being given by said county commissioners, erect its poles along said bridge and approaches and string its trolley wires thereon, the same to be done under the supervision of and in a manner satisfactory to said county commissioners. Said county of Cumberland shall thereafter maintain said ducts and conduits, and shall receive

28 from the parties using them a reasonable compensation, as
29 rental based upon the cost of construction and expense of
30 maintenance. In case said county commissioners do not
31 construct such ducts or conduits, or fail to construct them
32 of sufficient capacity to accommodate all persons or corpo-
33 rations desiring to cross said railroad tracks and said har-
34 bor at said point, with wires and cables, or the said county
35 commissioners deem it inexpedient for any reason to lay
36 and construct sufficient additional ducts and conduits, for
37 such purposes, any person or corporation may in that event
38 obtain permission from the said county commissioners to
39 lay and construct new or additional ducts and conduits in
40 the manner aforesaid, and lay their wires and cables therein,
41 said permission to be obtained in the same manner and un-
42 der the same restrictions as when permission is obtained of
43 the municipal officers of cities and towns for constructing
44 ducts and conduits, and laying wires and cables beneath the
45 surface of highways, under the provisions of chapter 55 of
46 the Revised Statutes.

Sect. 8. Said county commissioners for and in behalf of
2 said county of Cumberland as party plaintiff shall file a peti-
3 tion in the office of the clerk of the supreme judicial court
4 for the county of Cumberland in term time or vacation
5 addressed to any justice thereof in which said petition the
6 Portland Terminal Company and Portland Railroad Com-
7 pany or their respective successors, lessees or assigns shall
8 be made parties defendant and which said petition shall set

9 forth according to the practice in equity all the facts neces-
10 sary to bring the matter before the court, to determine the
11 proportions which the said several parties as aforesaid
12 ought in equity to bear of the cost of construction and main-
13 tenance of said bridge and the removal of the present
14 bridge including all expenditures necessary for and inci-
15 dental to carrying out the purposes of this act, and interest
16 computed as provided in section 11 hereof.

The said justice shall order notice to be served upon each
18 of said defendant corporations, their respective successors,
19 lessees, or assigns to appear and answer to said petition on
20 a day certain not later than thirty (30) days from the date
21 of the filing of said petition.

If any party defendant upon which service of said petition
23 and order has been made as aforesaid shall fail, neglect
24 or refuse to answer to said petition upon the return day
25 thereof, all proceedings upon said petition shall continue
26 ex parte, as to such defendant, in the same manner as herein
27 provided for other defendants, and any defendants so
28 failing, neglecting or refusing to answer shall nevertheless
29 be deemed a party to said proceedings so far as necessary
30 for determining the proportional part which said defendant
31 shall bear of the cost of construction and maintenance of
32 the said bridge and the removal of the present bridge, in-
33 cluding all expenditures necessary for and incidental to the
34 carrying out of the purposes of this act and interest as
35 aforesaid but such defendant shall not be entitled to be

36 heard in defense. Said defendant so failing, neglecting or
37 refusing to answer as aforesaid shall, however, be subject
38 to the jurisdiction of said court, and to all such orders,
39 decrees and process as are herein provided for as to other
40 defendants.

Said petition shall not be dismissed after filing but may
42 and shall be amended in any manner required to enable the
43 court to join all necessary parties and to make all necessary
44 orders and decrees thereon.

The court shall thereupon proceed to hear and determine
46 the cause upon petition and answers or if no answers are
47 filed, ex parte, provided that for the guidance of the court
48 the justice hearing the same may frame issues of fact or
49 law or both or questions which he may commit to any per-
50 son or board as he may deem proper with instructions after
51 notice to parties and hearing to report findings thereon.

All the costs and expenses arising under said petition and
53 determination and adjudication of the proportions which
54 the said parties shall bear as aforesaid including such com-
55 pensation for persons to whom issues or questions may
56 have been committed as hereinabove provided, compensa-
57 tion for such stenographers as by permission of the court
58 may have been employed for the convenience of the court,
59 of parties and of counsel, and compensation for expert or
60 professional witnesses which the said parties shall bear shall
61 be paid and borne as directed by the court in its final
62 decree.

Sect. 9. After the reconstruction and extension of said
2 Portland bridge, the county commissioners of said Cumber-
3 land county may at their discretion enter into an agreement
4 with any railroad operated by electricity or other motive
5 power, other than the Portland Railroad, and which may
6 otherwise lawfully cross said bridge, to permit and allow
7 the use and crossing of said bridge by such railroad or rail-
8 roads for the purposes of public traffic under such terms
9 and for such periods as they may agree. The amount paid
10 by such railroad or railroads for the privilege of using and
11 crossing said bridge shall be used to defray the expenses
12 of the reconstruction and maintenance of said bridge, the
13 removal of the present bridge, including all expenses neces-
14 sary for and incidental to carrying out the purposes of this
15 act, or the payment of the annual interest on the bonds
16 issued by said county under this act, or be placed in a sink-
17 ing fund to be held and invested and the proceeds thereof
18 applied in part payment of said bonds, or placed in the gen-
19 eral fund of the said county of Cumberland to be used for
20 the expenses of the said county at the discretion of the said
21 commissioners. In case the county commissioners fail to
22 come to an agreement with such railroads as request per-
23 mission to use and cross over said bridge after the construc-
24 tion thereof, the terms and conditions under which the same
25 may be so used or crossed, shall be determined by the
26 county commissioners filing at any time in the office of the
27 supreme judicial court for the county of Cumberland a

28 petition addressed to any justice of said court, in which
29 petition the facts necessary for a proper understanding of
30 the case may be set forth, whereupon the justice shall order
31 notices to be served as provided in section 8 of this chapter
32 and all other proceedings for the determination of said mat-
33 ter shall be in accordance with and in manner provided there-
34 after in said section 8.

Sect. 10. To procure funds for the construction and ex-
2 tension of said bridge, including the approaches thereto, the
3 taking of necessary lands and interests therein, rights of
4 way or any other rights, the construction of the dolphins or
5 other necessary and appurtenant structures for the opera-
6 tion of the draw and the convenience of navigation, the
7 building of a temporary bridge or bridges, if necessary, and
8 the removal of the present bridge, and such other expendi-
9 tures as may be necessary for or incidental to carrying out
10 the purposes of this act, said county of Cumberland, by
11 and through its said county commissioners is authorized to
12 borrow money and to issue temporary notes or interest
13 bearing bonds of said county, and the rate of interest on
14 said bonds shall not exceed four per cent (4%) per annum.
15 Said obligations shall be valid without first obtaining the
16 consent of said county as provided in sections 14 and 16 of
17 chapter 80 of the Revised Statutes.

Sect. 11. Upon the completion of the construction and
2 extension of said bridge, said county commissioners shall
3 file with the clerk of each of said railroad corporations,

4 their respective successors, lessees or assigns, liable to pay
5 any proportion of the same, a detailed statement of the
6 total amount of the cost of construction and extension of
7 said bridge, including all expenditures necessary for and
8 incidental to carrying out of the purposes of this act, and
9 interest upon the several amounts which may have been paid
10 by the said county of Cumberland during the construction
11 of said bridge, at the rate of four per cent (4%) per an-
12 num from the time such payments were made to the date of
13 the filing of said statement, together with a written demand
14 for the payment of each such company's proportion of said
15 total cost, expenditures and interest as aforesaid, as agreed
16 upon under the provisions of section 2 of this act, or as
17 determined under the provisions of section 3 of this act.
18 Upon the neglect, refusal or failure of any said railroad
19 corporations, for the period of ten days after the filing of
20 such statement and demand, to pay its proportional part as
21 aforesaid, the same may be recovered of such company
22 neglecting, refusing or failing so to pay, by the said county
23 of Cumberland, in an action of debt commenced in any
24 court of competent jurisdiction in this state.

On or before the first day of April of each year, the said
26 county commissioners shall file with the clerk of each of said
27 railroad corporations, their respective successors, lessees or
28 assigns, liable to pay any proportion of the same, a detailed
29 statement of the total amount of the cost of the repairs and
30 maintenance of said bridge during the preceding fiscal year,

31 including interest upon the several amounts which may have
32 been paid by the said county of Cumberland during said
33 preceding fiscal year for such repairs and maintenance at
34 the rate of four per cent (4%) per annum from the time
35 such payments were made to the date of the filing of said
36 statement, together with a written demand for the payment
37 of each company's proportion of said total cost of repairs,
38 maintenance and interest as aforesaid as agreed upon under
39 the provisions of section two or as determined under the
40 provisions of section three of this act. And upon the neg-
41 lect, refusal of any of the said railroad corporations for
42 the period of ten days after the filing of such statement and
43 demand to pay its proportional part as aforesaid, the same
44 may be recovered of such company neglecting, refusing or
45 failing so to pay, by the said county of Cumberland in an
46 action of debt, commenced in any court of competent juris-
47 diction in this state.