

MAINE STATE LEGISLATURE

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EIGHTY - EIGHTH LEGISLATURE

Legislative Document

No. 259

S. P. 118

In Senate, Feb. 3, 1937.

Taken from Table on Motion by Sen. Fernald of Waldo and on further motion by Senator Fernald of Waldo referred to Committee on Legal Affairs and 500 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Martin of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

AN ACT Relative to the Issuing of Capital Stock by Railroad Corporations.

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

Sec. 1. R. S., c. 63, § 19, amended. Section 19 of chapter 63 of the revised statutes is hereby amended to read as follows:

‘Sec. 19. Railroad corporation may increase its capital stock beyond amount first authorized. A railroad corporation for the purpose of building a branch railroad track which it is or may be authorized to build, or of building a branch or extension which it is or may be authorized to build, or of aiding in the construction of another railroad pursuant to law, or of building stations, or of abolishing grade crossings, or of making permanent improvements, or of paying its floating debt, or of paying its funded debt, or for the payment of money borrowed for any lawful purpose, or for the purchase of shares of the capital stock of any railroad corporation whose railroad is leased to or operated by it, or for the purchase of shares of the capital stock of any railroad corporation of which capital stock it owns a majority, or for improving the alignment of its road, or for acquiring land for and laying new tracks, or for other necessary and lawful purposes,

including the retiring or refunding of capital stock of any class, not named in section 5, from time to time, with the approval of the public utilities commission as hereinafter provided, may ~~increase issue~~ its capital stock ~~beyond to any the~~ amount fixed by law by issuing common or preferred stock, provided such ~~increase issue~~ shall first be authorized by vote of a majority of stock present or represented, at a legal meeting of the corporation duly called for that purpose. If preferred stock is issued, the character of such stock including its voting power, if any, and the rate of interest **or dividend to which it shall be entitled** and whether it shall be cumulative or non-cumulative shall be fixed by vote of a majority of stock present or represented at such legal meeting.'

Sec. 2. R. S., c. 63, § 20, amended. Section 20 of chapter 63 of the revised statutes is hereby amended to read as follows:

'Sec. 20. Proceedings before public utilities commission. Upon petition ~~of the directors~~ of the railroad corporation to the public utilities commission, the amount of such ~~increase issue of capital stock~~, after such notice by publication as the commission shall order, and after hearing, shall be determined by said commission, who shall within 30 days after final hearing of said petition, file in the office of the secretary of state a certificate showing the amount of ~~increase the issue~~ authorized and the purposes for which the proceeds of said new stock may be used; and the company shall not apply such ~~increase issue~~ or the proceeds thereof to any purpose not specified in said certificate, and may be enjoined from so doing by any justice of the supreme judicial court or of the superior court upon application of the board or of any interested party; the provisions of this section shall not apply to any railroad corporation ~~engaged in interstate commerce~~ **subject to the interstate commerce act**, while and so long as such corporation is required by federal law to make application to and procure consent from the interstate commerce commission as a condition precedent to any ~~increase in issue of~~ its capital stock.'

Sec. 3. R. S., c. 63, § 21, amended. Section 21 of chapter 63 of the revised statutes as amended by chapter 163 of the public laws of 1931, is hereby further amended to read as follows:

'Sec. 21. When stock is increased to be offered to stockholders proportionately; notice to each stockholder; sale of shares unsubscribed for. Whenever a railroad corporation which is in actual possession of and operating a railroad ~~increases its issues~~ capital stock the new shares shall be offered, **subject to the exceptions hereinafter in this section set forth,**

proportionately to its stockholders, **except to holders of such classes of stock which when issued provide that the same shall not be entitled to subscription rights or shall be entitled only to limited subscription rights, and** subject to the exceptions hereinafter in this section set forth; shares of stock to which the stockholders may be entitled to subscribe shall be offered to the stockholders at such price as may be determined by them or as shall be determined by the board of directors if the stockholders, by majority vote, delegate such authority to the board. The stockholders who shall be entitled to subscribe to such new shares shall be the stockholders of record upon the books of the company at such date as the stockholders may determine or at such date as the directors may determine, provided the stockholders shall delegate the determination of the date to the directors; the directors shall cause written notice of such ~~increase issue~~ to be given to each stockholder entitled to subscribe for the new shares, stating the amount of the ~~increase issue~~, the number of shares, or fraction of shares to which, according to the proportionate number of his shares at the date of the accrual of his rights he is entitled, the price at which he is entitled to take them, and fixing a date within which he may subscribe for such ~~additional new~~ stock. Each stockholder may, within the time limited, subscribe for his portion of such **new** stock, which shall be paid for in cash, **except as hereinafter provided**, before the issue of a certificate therefor; in the absence of charter provisions to the contrary, subscriptions may not be made for fractions of shares, but rights to subscribe for such fractions may be combined to create rights of subscription to full shares. ~~Provided,~~ **provided, however**, that when the ~~increase in the issue of~~ capital stock does not exceed 4% of the existing capital stock of the corporation, the directors, without first offering the same to the stockholders, may sell the same in such manner, under such conditions, at such price and on such terms as the public utilities commission shall approve in an order issued pursuant to a petition or application filed with it under the requirements of the preceding section. If, after the expiration of the notice above provided for, any shares of such stock remain unsubscribed for by the stockholders, or their assignees, entitled to take them, the directors may sell the same in such manner, under such conditions, at such price and on such terms as the public utilities commission shall approve in an order issued pursuant to a petition or application filed with it under the requirements of the preceding section.

Provided, further, that the determination by the public utilities commission, under the provisions of the preceding section as to the amount of such ~~increase issue~~, shall be based upon the price at which such stock is to be

issued as approved by the stockholders, or by the board of directors, and the said commission shall refuse to approve any particular issue of stock if, in their opinion, the price approved by the stockholders or by the board of directors is unreasonably low, or the said commission may make its approval conditional upon such stock being issued or sold at a price not less than that which the commission shall determine.

When any class of stock is ~~increased~~ **issued** for the purpose of retiring interest bearing obligations, at or before maturity, or for the purpose of retiring preferred capital stock, such stock need not be offered to the stockholders but, **pursuant to resolutions duly adopted by the board of directors**, may be issued, **in whole or in part**, in exchange for the interest bearing obligations or the preferred stock to be retired, in such amounts, at such prices and on such terms and conditions as shall be determined by ~~a majority vote of the stockholders, or as shall be determined by the board of directors, if the stockholders, by a majority vote, delegate such authority to the board.~~ When bonds or other interest bearing obligations maturing at periods of more than 12 months after the date thereof hereafter are issued, or when any class of preferred stock hereafter is issued, there may be attached thereto warrants entitling the holder thereof to subscribe, at some future date or dates, for shares of common stock in such amounts, at such time or times, at such price or prices and under such terms and conditions as the stockholders, by majority vote, shall determine or as shall be determined by the board of directors if the stockholders, by majority vote, delegate such authority to the board; such securities so issued with such warrants attached need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and common stock authorized to be issued to meet the purchase rights of such warrants shall be wholly exempt from any provisions of this section requiring that ~~increases in issues of~~ **capital stock** shall be offered to the stockholders. Bonds or other interest bearing obligations maturing at periods of more than 12 months after the date thereof and any class of preferred stock may be issued with provision that such bonds or other interest bearing obligations and such stock may be converted into common stock **or into a specified class or classes of preferred stock**, in such amounts, at such future date or dates, at such price or prices and on such terms and conditions as the stockholders, by majority vote, shall determine or as shall be determined by the board of directors if the stockholders, by majority vote, delegate such authority to the board; such securities so issued with such convertible provisions need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and ~~common~~ **capital stock of any class** authorized for issu-

ance in exchange for any such convertible bond or other interest bearing obligations, or any such convertible preferred stock, shall be wholly exempt from any provisions of this section requiring that ~~increases in issues of~~ capital stock shall be offered to the stockholders.

None of the provisions of ~~this chapter sixty two of the revised statutes~~ requiring approval of the public utilities commission as a condition precedent to the issuing of any class of securities shall apply to any railroad corporation ~~engaged in interstate commerce~~ **subject to the interstate commerce act**, or to the securities issued or to be issued by such corporation, while and so long as such corporation is required by federal law to make application to and procure consent from the interstate commerce commission as a condition precedent to the issuing of the securities proposed to be issued by such railroad corporation.'