

MAINE STATE LEGISLATURE

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

Legislative Document

No. 200

S. P. 100

In Senate, January 23, 1947.

Referred to Committee on Public Utilities. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Batchelder of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT to Provide for Authorization of Issue of Stocks, Bonds, or Notes by Public Utilities and Railroads.

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

Sec. 1. R. S., c. 40, § 42, amended. Section 42 of chapter 40 of the revised statutes is hereby amended to read as follows:

'Sec. 42. Authorization of issue of stocks, bonds, and notes by public utilities. Any public utility now organized and existing or hereafter incorporated under and by virtue of the laws of this state and doing business in the state may issue stocks, bonds which may be secured by mortgages on its property, franchises, or otherwise, notes or other evidences of indebtedness, payable at periods of more than ~~42~~ 24 months after the date thereof, when necessary for the acquisition of property to be used for the purpose of carrying out its corporate powers, the construction, completion, extension, or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, including capital stock, or to reimburse its treasury for moneys used for the acquisition of property, the construction, completion, extension, or improvement of its facilities, or for the discharge or lawful refunding of its obligations, and which actually were expended from income or from

other moneys in the treasury of the corporation not secured by, or obtained from the issue of stocks, bonds, notes, or other evidences of indebtedness of such corporation, or for any other lawful purposes; provided and not otherwise, that upon written application, setting forth such information as the commission may require, there shall have been secured from the commission an order authorizing such issue and the amount thereof and stating that in the opinion of the commission the sum of the capital to be secured by the issue of said stocks, bonds, notes, or other evidences of indebtedness is required in good faith for purposes enumerated in this section; and every such order, authorizing the issue of stock, shall, if authorized to be sold at less than its par value, specify a minimum price at which the shares so authorized are to be sold, and any and all shares of stock, issued in accordance with the provisions of such an order, shall be full paid stock and not liable to any further call or payment thereon, notwithstanding it may have been authorized for sale at less than its par value; but the provisions of this chapter shall not apply to any stocks or bonds or other evidences of indebtedness heretofore lawfully authorized and issued; provided, however, that the commission may at the request of any public utility approve the issue of any stocks or bonds heretofore authorized but not issued. For the purpose of enabling the commission to determine whether it shall issue such an order, the commission shall make such inquiries for investigation, hold such hearings and examine such witnesses, books, papers, documents, or contracts as it may deem of importance in enabling it to reach a determination. No order of the commission authorizing the issue of any stocks, bonds, notes, or other evidences of indebtedness shall limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule, or joint rate as provided in this chapter; provided, however, that no public utility shall be required to apply to the commission for authority to issue stocks, bonds, notes, or other evidences of indebtedness for the acquisition of property, for the purposes of carrying out its corporate powers, the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service outside the state, and this proviso shall apply also to the following section.

Subject to the foregoing and subsequent provisions of this section any railroad corporation may issue bonds or other interest-bearing securities maturing at periods of more than ~~12~~ 24 months after the date thereof and may issue one or more classes of preferred stock which may have attached thereto warrants entitling the holder thereof to subscribe for shares of common stock or preferred stock of any class in such amounts, at such

future date or dates, at such price or prices and on such terms and conditions as may be specified in said warrants; such bonds or other interest-bearing obligations and such preferred stock also may be issued with provision therein or thereon that the same may be converted into shares of common stock or preferred stock of any class in such amounts, at such future date or dates, at such price or prices and on such terms and conditions as may be specified in or on such bonds or other interest-bearing obligations or in or on the certificates representing such preferred stock. The foregoing provisions of this paragraph shall apply to securities of the character specified in this paragraph issued by any railroad corporation on or after October 1, 1934; and such securities need not be offered to the stockholders unless the stockholders, by majority vote, shall so require, and common or preferred stock of any class authorized to be hereafter issued to meet the purchase rights of such warrants issued on or after October 1, 1934, or in exchange for any such convertible securities so issued, shall be wholly exempt from any provisions of section 23 of chapter 41 requiring that certain increases in capital stock shall be offered to stockholders.

Without in any way restricting the general language hereof, this section shall be construed to authorize any municipal or quasi-municipal corporation referred to in this chapter to issue, upon vote of its trustees or similar governing board, bonds, notes, or other evidences of indebtedness for the purposes herein specified and subject to the approval of the commission as herein provided. The trustees or similar governing boards of any such corporations may issue notes or other evidences of indebtedness payable at periods of less than ~~24~~ 24 months after the date thereof when necessary to carry out the purposes of such corporation.

No railroad corporation subject to the interstate commerce act shall be required to make application to the commission, or to procure its authority, consent, approval, or order, in respect of any of the matters set forth in this section or in sections 43 and 45, while and so long as such corporation is required by federal law to make application to and procure authority from the interstate commerce commission as a condition precedent to such proposed action. Such corporation, however, shall file with the secretary of state due notice of any increase or other change in its capital stock authorized or issued, and shall pay such fees in respect thereof as may be required by statute; such notice shall be filed, and all fees required shall be paid, within 30 days after due authority has been given by the interstate commerce commission relative to the increase, or other change; no other notice shall be required to be given to the secretary of state by the corporation,

and all increases or other changes in the authorized or issued capital stock of any corporation heretofore approved or authorized by the interstate commerce commission, and as to which a copy of the report and order of said commission has been filed with the secretary of state and the fees required by statute have been paid, shall be deemed to have been lawfully authorized, issued, and made regardless of any other statutory provisions relative to notice to the secretary of state of increases or other changes in capital stock of corporations.'

Sec. 2. R. S., c. 40, § 43, amended. Section 43 of chapter 40 of the revised statutes is amended to read as follows :

'Sec. 43. Conditions under which public utility may issue stocks, bonds, and notes. No public utility shall issue any stocks, bonds, notes, or other evidences of indebtedness unless payable within ~~1 year~~ **2 years** from date thereof, for money, property, or services, in payment for the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the order of the commission as herein provided; and no indebtedness shall in whole or in part, directly or indirectly, be refunded by any issue of stocks or bonds or by any other evidence of indebtedness running for more than ~~12~~ **24** months, without the consent of the commission.'

Sec. 3. R. S., c. 41, § 23, amended. Section 23 of chapter 41 of the revised statutes is amended to read as follows :

'Sec. 23. When stock is increased to be offered to stockholders proportionately, exceptions; notice to each stockholder; sale of shares unsubscribed for; bondholders, right to subscribe. Whenever a railroad corporation which is in actual possession of and operating a railroad 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 issue to be given to each stockholder entitled to subscribe for the new shares, stating the amount of the 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 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, however, that when 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 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 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 the board of direc-

tors. When bonds or other interest-bearing obligations maturing at periods of more than ~~12~~ 24 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 issues of capital stock shall be offered to the stockholders. Bonds or other interest-bearing obligations maturing at periods of more than ~~12~~ 24 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 capital stock of any class authorized for issuance 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 issues of capital stock shall be offered to the stockholders.

None of the provisions of this chapter 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 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.