

The Commonwealth of Massachusetts

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MEMORANDUM OF COMMISSIONER OF CORPORATIONS AND TAXATION PURSUANT TO GENERAL LAWS, CHAPTER 3, SECTION 7, AS AMENDED, WITH RESPECT TO PETITION TO THE GENERAL COURT OF DENNIS A. DOOLEY (STATE LIBRARIAN) AND OTHERS FOR LEGISLATION TO INCORPORATE THE NEW ENGLAND DEPOSIT LIBRARY AND TO AUTHORIZE CERTAIN LIBRARIES TO MAKE USE OF ITS FACILITIES.

DECEMBER 6, 1940.

*To the Honorable Senate and House of Representatives.*

The above-named petition was transmitted to me by the Clerk of the House November 19, 1940.

The bill accompanying the petition provides for the incorporation of New England Deposit Library with a general view to making available to overcrowded libraries, at approximate cost, storage facilities for less used books and other library material. The objects are more fully stated in the petition. Although it might be possible to organize a corporation of a somewhat similar nature under General Laws, chapter 180, it is not possible in such manner to make those provisions deemed most desirable to carry out the objects sought. Probably the word "persons," as used in General Laws, chapter 180, section 1, contemplates persons acting as individuals rather than in an official capacity. Moreover, it is desired not to limit the amount of property to be held by the corporation to five million dollars. (See G. L., c. 180, § 9.) Again, sec-

tion 3 of the bill, for example, contains certain provisions which in the case of a corporation organized under General Laws might be altered without the consent of the General Court, but which in the case of a corporation of this kind it may be desirable for the General Court not to permit to be changed without legislative enactment. It would also appear that certain provisions apart from the organization of the corporation, such, for example, as the authority granted to political bodies to become members, could not be accomplished without legislation. It is accordingly my opinion that special legislation is probably necessary to accomplish fully the objects of the petition, and for reasons stated in the petition is clearly preferable to attempting to accomplish these objects under the General Laws. As the corporation sought to be created is non-profit, no fee is required.

In section 5 of the bill it is provided that certain sections of chapter 180 of the General Laws shall not apply to the corporation. As section 26 of chapter 180 by its terms applies only to a corporation organized under General Laws, and this corporation is not so organized, the reference to said section seems superfluous. It is also difficult to see how sections 1, 2 and 4 of said chapter 180 could be deemed to have any application to a corporation created by special act.

Attention is called to the tax exemption granted in the last paragraph of section 6 of the bill. In view of the nature and purposes of the proposed corporation, the General Court may deem this a wise and proper provision.

Respectfully yours,

HENRY F. LONG,  
*Commissioner of Corporations and Taxation.*

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By Mr. Herter of Boston, petition of Dennis A. Dooley (State Librarian) and others for legislation to incorporate the New England Deposit Library and to authorize certain libraries to make use of its facilities. Mercantile Affairs.

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## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-One.

AN ACT TO INCORPORATE NEW ENGLAND DEPOSIT LIBRARY  
AND REGULATING THE OPERATION OF SAID LIBRARY  
AND AUTHORIZING CERTAIN LIBRARIES TO MAKE USE  
OF ITS FACILITIES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Dennis A. Dooley, state librarian;  
2 Milton E. Lord, director of the public library of the  
3 city of Boston, hereafter called the Boston Public  
4 Library; Elinor Gregory, librarian of the Boston  
5 Athenaeum; Allyn B. Forbes, librarian of the Massa-  
6 chusetts Historical Society; William J. Murphy,  
7 president of Boston College; Daniel L. Marsh, presi-  
8 dent of Boston University, Keyes D. Metcalf, director  
9 of the Harvard University Library; William N.  
10 Seaver, librarian of Massachusetts Institute of Tech-  
11 nology; and their respective successors in such offices,  
12 together with such other persons as may be elected as  
13 provided in section three to represent other libraries,  
14 or as otherwise may be associated with them or suc-  
15 ceed them, are hereby constituted and made a corpo-

16 ration by the name of New England Deposit Library  
17 for the purpose of providing and maintaining, in such  
18 manner and to such extent as the governing board of  
19 said corporation shall determine, a place or places of  
20 deposit and storage of books, pamphlets, photographs,  
21 music scores, phonograph records, moving picture  
22 films and other articles or documents containing writ-  
23 ten or printed matter belonging to or in the possession  
24 of libraries operated by the United States, by the  
25 commonwealth or any state, by any city or town, by  
26 any subdivision, board or agency of the common-  
27 wealth or of any state or of any city or town, by any  
28 non-profit institution, or by any literary, educational,  
29 charitable or scientific society, corporation, associa-  
30 tion or trust, and of providing library facilities and  
31 services of any kind or description with respect to  
32 such books and other articles.

33 The objects of the corporation hereby created shall  
34 be exclusively charitable, educational, scientific, and  
35 literary, and said corporation shall have perpetual  
36 existence, until and unless dissolved in accordance  
37 with law.

38 No funds of said corporation shall be distributed  
39 among its own members, but all such funds shall be  
40 devoted solely to the carrying out of the purposes for  
41 which said corporation is created. Said corporation  
42 shall have no capital stock.

1 SECTION 2. Said corporation shall have authority  
2 to hold for the purposes aforesaid real and personal  
3 estate in any amount, which estate or its income shall  
4 be devoted to the purposes set forth in this act or to  
5 such other charitable, educational, scientific, or  
6 literary purposes as the corporation may be per-

7 mitted to engage in by lawful amendment of its  
8 charter.

1 SECTION 3. The incorporators named in section one  
2 and their successors in the offices which in said section  
3 they are respectively described as occupying shall  
4 constitute the members of said corporation, and said  
5 members may from time to time in their discretion  
6 elect by a two thirds vote of all the members for the  
7 time being as additional members not more than one  
8 person to represent each library which may be ad-  
9 mitted by the governing board of said corporation  
10 to the use of the facilities and services of said corpo-  
11 ration. The members of said corporation as such  
12 shall have only such powers as are expressly granted  
13 to them by the provisions of this act.

14 The term "participating institution" when used in  
15 this act shall be deemed to refer to any body politic,  
16 city or town, public board or agency, non-profit  
17 institution, library, or literary, educational, charitable  
18 or scientific society, corporation, association or trust  
19 (a) which is expressly mentioned in section one of  
20 this act or which maintains a library which has been  
21 admitted by the governing board of said corporation  
22 to the use of the facilities and services of said corpo-  
23 ration, and (b) which continues to utilize such facili-  
24 ties and services. No library, institution, society,  
25 corporation, association or trust formed to engage in  
26 business for profit shall become a participating insti-  
27 tution. Unless otherwise provided by a contract with  
28 said corporation, any participating institution may  
29 cease to be such and may cease to utilize the facilities  
30 and services of said corporation by delivering to said  
31 corporation addressed to its treasurer six months

32 written notice of its intention to cease to be a partici-  
33 pating institution upon a date stated in said notice;  
34 provided, however, that the State Library, the Boston  
35 Public Library, the commonwealth or any city, town  
36 or subdivision thereof or any department, board or  
37 agency of the commonwealth or of any city, town or  
38 subdivision thereof may cease to be a participating  
39 institution at any time by delivering to said corpo-  
40 ration more than one hundred and twenty days writ-  
41 ten notice of intention to cease to be a participating  
42 institution upon a date stated in the notice.

43 Whenever any participating institution shall cease  
44 to utilize the facilities and services of said corporation,  
45 any member or members of the corporation repre-  
46 senting such institution shall cease to be members.  
47 The determination of two thirds of the members of  
48 the governing board shall be final as to the right of any  
49 person to remain a member of said corporation.  
50 The governing board may provide by regulation for  
51 the disposition of books and other material deposited  
52 with it by participating institutions ceasing to utilize  
53 the facilities and services of the corporation, which  
54 fail to remove such books and material after reason-  
55 able notice.

56 The whole control and government of said corpo-  
57 ration, subject only to the powers expressly granted  
58 by this act to its members, shall be vested in a govern-  
59 ing board consisting of seven directors. Until and  
60 including February first nineteen hundred and forty-  
61 six or until their respective successors as directors are  
62 duly elected and qualified, the directors shall be the  
63 individuals respectively occupying each of the follow-  
64 ing positions, viz., state librarian, librarian of the  
65 Boston Athenaeum, director of the Boston Public

66 Library, librarian of Boston College, librarian of the  
67 Library of the College of Liberal Arts of Boston Uni-  
68 versity, director of the Harvard University Library  
69 and the librarian of Massachusetts Institute of  
70 Technology and their respective successors from time  
71 to time in said offices, and such individuals shall con-  
72 tinue to be directors or to be entitled to serve as such  
73 only while occupying such positions. After February  
74 first, nineteen hundred and forty-six, and so long as  
75 the State Library and the Boston Public Library,  
76 respectively, shall continue to be participating institu-  
77 tions, the individuals occupying the offices of state  
78 librarian and director of the Boston Public Library,  
79 respectively, and their respective successors from  
80 time to time in the said offices, while occupying said  
81 offices, shall each be directors of said corporation and  
82 the remaining five directors shall be selected in the  
83 manner hereinafter provided in this section. If the  
84 State Library or the Boston Public Library, respec-  
85 tively, shall at any time cease to be participating  
86 institutions, the state librarian or the director of the  
87 Boston Public Library, respectively, as the case may  
88 be, shall cease to be a director, and thereafter for  
89 each of said two institutions ceasing to be a partici-  
90 pating institution, an additional director shall be  
91 elected at each election in the manner hereinafter  
92 provided in this section. From and after February  
93 first, nineteen hundred and forty-six, the five direc-  
94 tors remaining to be elected, and any additional  
95 director or directors to be elected by reason of the  
96 fact that the State Library or the Boston Public  
97 Library, or either of them, shall have ceased to be  
98 participating institutions, shall be chosen at five year  
99 intervals, as hereinafter provided, by the members of

100 said corporation other than the members representing  
101 the State Library and the Boston Public Library  
102 (which institutions so long as they severally are partic-  
103 ipating institutions shall be represented by the state  
104 librarian and the director of the Boston Public Library,  
105 respectively, as aforesaid). In any such election the  
106 members entitled to vote shall have voting power in  
107 proportion to the use of the facilities and services of  
108 said corporation for which each participating institu-  
109 tion which they severally represent shall have been  
110 paying, as determined by the governing board as of  
111 November first of the year next prior to the year in  
112 which such election shall be held, provided, however,  
113 that no member representing any participating  
114 institution shall be entitled to exercise more than  
115 forty per cent of the total voting power at any such  
116 election. The first such election shall be held at  
117 a meeting of the members of the said corporation  
118 to be held at such time as the governing board shall  
119 select, not later than February first in the year nine-  
120 teen hundred and forty-six, or at a meeting called  
121 thereafter in lieu of such meeting, if by inadvertence  
122 or otherwise such meeting shall not be called season-  
123 ably. Subsequent elections shall take place at a  
124 meeting to be called by the governing board in Janu-  
125 ary of every fifth year following the year nineteen  
126 hundred and forty-six or at a meeting in lieu of such  
127 meeting, if by inadvertence or otherwise such meeting  
128 shall not be called seasonably. Such directors so  
129 elected shall serve for a term expiring five years from  
130 February first in the year of their election and until  
131 their respective successors are elected and qualified.  
132 Whenever a vacancy shall occur in the elected mem-  
133 bership of said governing board, the remaining direc-

134 tors may fill such vacancy for the unexpired term.  
135 Any vacancy which may exist at any time in the  
136 governing board from time to time by reason of the  
137 fact that there is for the time being no occupant of an  
138 office, the holder of which is ex-officio a member of the  
139 governing board, may be filled for so long as such  
140 condition exists by the remaining directors, and any  
141 other vacancy occurring prior to February first, nine-  
142 teen hundred and forty-six, may be filled by the re-  
143 maining directors until such date. No person shall be  
144 eligible to election as a director or shall continue to be  
145 a director who is not a member of said corporation or  
146 a trustee, officer or librarian or a member of the  
147 faculty of a participating institution. Any member  
148 of the corporation may vote on any matter at any  
149 meeting of the members of the corporation either in  
150 person or by written proxy given as of a date not more  
151 than six months prior to such meeting.

1 SECTION 4. Said governing board shall elect a  
2 president, a treasurer, a clerk and such other officers  
3 as they may deem necessary, and may prescribe their  
4 duties, and may, but need not, require the treasurer  
5 to give bond with satisfactory sureties in such sum as  
6 in their discretion they may deem wise and expedient.  
7 The directors of said corporation shall not be entitled  
8 to any compensation for their services as such direc-  
9 tors, but may by vote of the governing board be  
10 granted and paid their reasonable traveling and other  
11 expenses incurred in the service or work of said cor-  
12 poration but no bill for such expenses shall be sub-  
13 mitted or paid unless it has first been approved by  
14 the treasurer of said corporation.

1 SECTION 5. The governing board may from time to  
2 time make, adopt, alter, amend and repeal by-laws  
3 and rules and regulations consistent with law and for  
4 the conduct of the affairs and services of said corpo-  
5 ration. Said governing board, with the approval of  
6 a majority of the members present at a meeting of the  
7 members called for the purpose, may effect any  
8 amendment of the charter or purposes of said corpo-  
9 ration which a corporation formed for similar purposes  
10 under chapter one hundred and eighty of the General  
11 Laws could lawfully effect. The said corporation  
12 shall have all the powers and privileges, and be subject  
13 to all the restrictions, duties and liabilities, set forth  
14 in all general laws now or hereafter in force relating  
15 to such corporations, except as otherwise provided  
16 herein. The said corporation shall not be subject to  
17 the provisions of sections one to six, inclusive, and  
18 sections twelve, twenty-six and twenty-six A of  
19 chapter one hundred and eighty of the General Laws.  
20 In addition to all other powers granted by this act  
21 and by the provisions of the General Laws, said corpo-  
22 ration shall have the following powers:

23 (a) To lease or rent storage space and library  
24 facilities to participating institutions;

25 (b) To purchase, convey or lease real and personal  
26 property within or beyond the limits of the common-  
27 wealth as may be necessary or expedient for the pur-  
28 poses of its organization;

29 (c) To carry on such activities consistent with its  
30 corporate purposes as may be convenient or desirable,  
31 either within or beyond the limits of the common-  
32 wealth, including, without limitation of the foregoing,  
33 the maintenance of a service of delivery of books and

34 other articles deposited with it to depositors and  
35 others by messenger, mail or otherwise;

36 (d) To make contracts, incur liabilities and borrow  
37 money from any person or persons, including without  
38 limitation any participating institution, other than  
39 the commonwealth or a subdivision or agency thereof  
40 or any city or town, on the credit of said corporation  
41 and for its use, and to mortgage or pledge any of its  
42 real or personal property to secure loans but no  
43 mortgage of any real estate of the corporation shall be  
44 made except upon the affirmative vote of two thirds  
45 of the members of the governing board at a meeting  
46 of said board called for the purpose;

47 (e) To have perpetual succession in its corporate  
48 name;

49 (f) To receive, accept, purchase, or otherwise ac-  
50 quire, hold, administer and dispose of property of any  
51 kind and description which at any time and from time  
52 to time may or shall be given, devised, bequeathed,  
53 conveyed, sold, transferred or assigned to said corpo-  
54 ration in connection with or for or in furtherance of  
55 the purposes and objects to be served and accom-  
56 plished by the creation of the corporation or any of  
57 them;

58 (g) To publish, purchase, sell, circulate and distrib-  
59 ute, in such manner as the governing board shall  
60 from time to time deem expedient, any and all educa-  
61 tional, literary, scientific or scholarly publications,  
62 books, catalogs and periodicals dealing with the books  
63 and other material deposited in said library or avail-  
64 able in participating and other libraries.

1 SECTION 6. If and to the extent that such author-  
2 ization may be necessary or expedient, the President

3 and Fellows of Harvard College are hereby given full  
4 authority from time to time in their discretion to  
5 convey or to lease to said corporation either without  
6 consideration or upon such terms and conditions as  
7 may be agreed upon by said corporation and said  
8 President and Fellows, the whole or any part of any  
9 land in the Brighton district of Boston lying in general  
10 northeasterly of the junction of Cambridge and Win-  
11 dom streets and within fifteen hundred feet of said  
12 junction which said President and Fellows may now  
13 own or may hereafter acquire, but nothing in this sec-  
14 tion shall be construed as requiring any such convey-  
15 ance or lease.

16 The said land while owned or leased by said cor-  
17 poration and all property, real or personal, and  
18 income of said corporation and all books, pamphlets,  
19 documents, or other articles deposited with said  
20 corporation and owned by said corporation or by any  
21 participating institution shall be exempt from taxa-  
22 tion by the commonwealth or any agency or subdivi-  
23 sion thereof or by any city or town. Said corporation  
24 shall not be subject to any tax upon or with respect  
25 to its income or corporate franchise.

1 SECTION 7. Full power and authority are hereby  
2 given to the trustees of the State Library, the trustees  
3 of the Boston Public Library, and to any city or town  
4 or any other subdivision, board, department or  
5 agency of the commonwealth or of any of its cities,  
6 towns or subdivisions, or to any board having  
7 custody of any publicly owned library and to any  
8 charitable, educational, scientific, religious, or literary  
9 corporation, institution, association or trust, and  
10 to any participating institution, and to the directors,

11 trustees, librarians and other officers of any of the  
12 foregoing

13 (1) To deposit with said corporation any books, pam-  
14 phlets, documents, or other articles, which the govern-  
15 ing board of said corporation is willing to receive;

16 (2) To participate as provided in this act, but  
17 subject to and in accordance with the duly adopted  
18 by-laws or rules and regulations of said corporation,  
19 in the management of said corporation and to hold  
20 office in said corporation;

21 (3) To make contracts with said corporation for  
22 the storage of books, pamphlets, and other articles  
23 and for library facilities and service connected there-  
24 with for such term or period as they or any of them  
25 and said corporation may deem proper and to pay  
26 therefor a reasonable charge, which in the case of  
27 the commonwealth or any subdivision thereof, of  
28 any city or town or of any board, department or  
29 agency of the commonwealth or any subdivision  
30 thereof, shall not exceed a reasonable charge based  
31 upon an equitable allocation, as determined by the  
32 governing board in accordance with any applicable  
33 by-laws or rules or regulations which it may adopt,  
34 (a) of the operating and maintenance expenses of  
35 said corporation, including reasonable repair, de-  
36 preciation and contingency reserves and (b) of the  
37 expenses of debt service, insurance of the structures  
38 and equipment owned by said corporation and  
39 amortization of loans incurred for buildings, library  
40 equipment and other facilities provided by said  
41 corporation;

42 (4) Except in the case of the commonwealth or  
43 any subdivision thereof, or of any city or town, or  
44 of any board, department or agency of the common-

45 wealth or any subdivision thereof, or any city or  
46 town, to make grants or gifts to said corporation  
47 in aid of the construction or provision of storage  
48 or library facilities, buildings and equipment, the  
49 amount and nature of which contributions may be  
50 taken into account in such manner as the governing  
51 board may determine in fixing the amount of any  
52 charges for storage and library facilities and service  
53 to the participating institution making such grant  
54 or gift, provided, however, that the foregoing provi-  
55 sion shall not be deemed to authorize any expendi-  
56 tures of funds held upon specific trust which by the  
57 terms of such trust may not properly be expended  
58 for such purpose.

59 Nothing in this act shall be construed to require  
60 said corporation to permit any library, city, town,  
61 body politic, or public agency, or any corporation,  
62 institution, association or trust to utilize the facilities  
63 of said corporation, unless the governing board  
64 shall approve such use and then only subject to the  
65 by-laws and rules and regulations of said corporation  
66 and to such terms and conditions as the governing  
67 board may determine. The trustees of the State  
68 Library and the state librarian shall have full au-  
69 thority to deposit books and other articles with said  
70 corporation notwithstanding the provisions of sec-  
71 tions thirty-three to thirty-nine, inclusive, of chapter  
72 six of the General Laws. Any contract made with  
73 said corporation by or in behalf of the State Library  
74 or with respect to books or other property in the  
75 custody of the state librarian or of any other agency,  
76 department, or board of the commonwealth shall be  
77 subject to approval by the board of trustees of the  
78 State Library. Any contract made with said cor-

79 poration with respect to books or other property of  
80 the Boston Public Library shall be subject to ap-  
81 proval by the board of trustees of said library.  
82 Any contract made with said corporation by any  
83 city or town or other subdivision of the common-  
84 wealth or by any board or agency of any such city,  
85 town or subdivision, shall be subject to approval  
86 by the board or officers having power to make con-  
87 tracts with respect to the same. Any contract made  
88 by or in behalf of the commonwealth or any city,  
89 town or subdivision thereof or of any department,  
90 board or agency of the commonwealth or of any  
91 city, town or subdivision thereof shall contain a  
92 provision that the payment of storage charges, or  
93 rents, or of any fee for library facilities and services  
94 shall be made only from valid appropriations made  
95 or thereafter to be made from which the payment of  
96 such charges, rents and fees can properly be made.  
97 Any books, pamphlets, documents, records or other  
98 articles deposited with said corporation or in a  
99 building owned or used by said corporation shall  
100 remain the property of and shall be held on deposit  
101 wholly at the risk of the participating institution  
102 making such deposit or other owner, unless the  
103 depositor or owner shall transfer title to such books,  
104 pamphlets, documents or other articles to said cor-  
105 poration. Nothing in this act shall be construed to  
106 prevent the State Library, the Boston Public Library,  
107 the commonwealth or any city, town or subdivision  
108 thereof or any department, board or agency of the  
109 commonwealth or of any city, town or subdivision  
110 thereof from ceasing to be a participating institu-  
111 tion at any time in the manner provided in section  
112 three.

1 SECTION 8. The provisions of the various sec-  
2 tions of this act are hereby declared to be separable  
3 and if any such provision, or the application of such  
4 provision to any person or circumstance, shall be  
5 held to be invalid or unconstitutional, such invalidity  
6 or unconstitutionality shall not be construed to  
7 affect the validity or constitutionality of any of the  
8 remaining provisions of said sections or the applica-  
9 tion of such provision to persons or circumstances  
10 other than those as to which it is held invalid. It  
11 is hereby declared to be the legislative intent that  
12 said sections would have been enacted had such  
13 invalid or unconstitutional provision not been  
14 included therein. Without limitation of the fore-  
15 going it shall not affect the validity of any of the  
16 other provisions of this act or the validity of any  
17 provision of this act with respect to any other person,  
18 if it shall be held that any participating institution  
19 or any officer of any participating institution or any  
20 public body or officer, notwithstanding the provi-  
21 sions of this act, is without authority to do any act  
22 or thing or to make any expenditure or grant or to  
23 carry out any duty or power or exercise any author-  
24 ity, which this act or any provision of this act pur-  
25 ports to authorize or require.