

The Commonwealth of Massachusetts

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SPECIAL REPORT OF THE DEPARTMENT OF  
PUBLIC WORKS AND THE ATTORNEY  
GENERAL RELATIVE TO ACQUIRING A  
RIGHT OF WAY FOR PUBLIC ACCESS TO  
SHEEP POND IN BREWSTER.

[Harbors and Public Lands.]

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BOSTON, DECEMBER 21, 1948.

*To the Honorable Senate and House of Representatives.*

The Joint Board, constituted under the provisions of section 18A of chapter 91 of the General Laws, submits the following report relative to a right of way for public access to Sheep Pond in Brewster. Section 18A provides:—

Upon petition of ten citizens of the commonwealth that in their opinion public necessity requires a right of way for public access to any great pond within the commonwealth, the department and the attorney general or a representative designated by him sitting jointly shall hold a public hearing and receive such evidence thereon as may be presented to them. The joint board may make such additional investigation as it deems desirable and if it appears to said board that such a right of way exists it shall present a petition to the land court for registration of the easement. If it appears that no right of way exists it shall submit a report, together with recommendations thereon, to the general court on or before January first of the following year. This section shall not apply to any body of water used as a source of water supply by the commonwealth or by any town or district, or water company, nor shall it affect the right of the commonwealth or any town or district or water company to the use and control of the waters of any such pond for the purposes of a water supply, nor shall it affect or diminish any existing right to use of the water of any such pond for mercantile or manufacturing purposes.

On January 28, 1948, under the provisions of this statute, the following petition, signed by ten citizens of the Commonwealth, was filed with the Department:

The undersigned, ten citizens of Massachusetts, respectfully represent that in their opinion necessity requires a right of way for public access to the shores of Sheep Pond, Brewster, a great pond in the town of Brewster, and request that a public hearing be held by the Joint Board under the provisions of section 18A of chapter 91 of the General Laws, and such further action taken by said Board as may be necessary under the provisions of said statute.

The Attorney General designated Assistant Attorney General William S. Kinney to represent him upon the Joint Board constituted under the provisions of said section 18A.

A public hearing, duly advertised, was held on November 9, 1948, at which all persons were given full opportunity to be heard and to submit evidence.

Sheep Pond has an area of approximately 148 acres and is comparatively undeveloped with a total of only about a dozen cottages on its shores.

The nearest public roads are Long Pond Road, or numbered route 137, running northerly and easterly of the pond but about 1,900 feet distant at its nearest point, and Pleasant Pond Road, or numbered route 24, running westerly of the pond but about 800 feet distant and with the railroad paralleling this road between it and the pond.

A wood road running southerly of the pond connects the said public roads and is approximately 300 feet from the pond at its nearest point but would require a taking some 4,000 feet in length.

A number of other dirt roads leading to the pond are for access to cottages although one of these which leaves Long Pond Road about at the location of the oil railroad depot and goes to the northerly end of the pond is said to have been used for access to the pond long before the three cottages near which it leads, were in existence, and is still so used. This route would require a taking about 3,000 feet in length, and is the nearest location from the village of Brewster.

At the southwesterly end of Sheep Pond access to the pond could be secured by a taking some 800 feet in

length part of which would be over an existing dirt road which crosses the railroad. Because of the railroad crossing this otherwise suitable route is not considered satisfactory for a public way.

Upon consideration of the evidence presented at the said public hearing and of the existing means of access to Sheep Pond the Board finds that no public right of way for access to the shore of the pond exists, and recommends that such a right of way be established. The Board concludes that the general route of said existing dirt road leading to the northerly shore of the pond from Long Pond Road, presents the most acceptable route.

The Board recommends that the County Commissioners of Barnstable County be directed to lay out a public right of way to Sheep Pond in the approximate route of said dirt road which leaves Long Pond Road near the old railroad depot location and approaches the northerly shore of the pond near a group of three cottages, or in such other location as may be determined to be equally suitable. The attached bill is submitted for the purpose of carrying out this recommendation.

The Board takes occasion to point out that the proposed Mid-Cape Highway, so called, the location for which has not been determined as far as Brewster is concerned, may if located in the near vicinity of this pond place a different aspect on the need for a public right of way as now petitioned for, but in any event is a thing of the future.

Respectfully submitted,

THE DEPARTMENT OF PUBLIC WORKS.

WILLIAM H. BURACKER,  
*Commissioner.*

GEORGE G. HYLAND,  
B. H. GROUT,  
*Associate Commissioners.*

DEPARTMENT OF ATTORNEY GENERAL.

WILLIAM S. KINNEY,  
*Assistant Attorney General.*

## PROPOSED LEGISLATION.

**The Commonwealth of Massachusetts**

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

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A RIGHT OF WAY FOR PUBLIC ACCESS AND AN AREA FOR THE PARKING OF VEHICLES CONTIGUOUS TO SAID RIGHT OF WAY TO SHEEP POND IN THE TOWN OF BREWSTER.

*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. The county commissioners of Barn-  
2 stable county are hereby authorized and directed to  
3 lay out in the town of Brewster a right of way for  
4 public access and an area for parking facilities con-  
5 tiguous to said right of way to Sheep pond in the  
6 town of Brewster, in accordance with plans to be  
7 approved by the department of public works and  
8 showing the location and dimensions of such right  
9 of way and parking area. If it is necessary to acquire  
10 land for the purpose of laying out such right of way  
11 or parking area said county commissioners shall at  
12 the time such right of way or parking area is laid  
13 out take such land by eminent domain under chapter  
14 seventy-nine of the General Laws. Any person  
15 sustaining damages in his property by the laying out  
16 of such right of way or parking area, or by specific

17 repairs or improvements thereon, shall be entitled  
18 to recover the same under said chapter seventy-nine;  
19 provided, that the right to recover damages, if any,  
20 by reason of the laying out of such right of way or  
21 parking area, shall vest upon the recording of the  
22 order of taking by said county commissioners and  
23 that no entry or possession for the purpose of con-  
24 structing a public way or parking area on land so  
25 taken shall be required for the purpose of validating  
26 such taking or for the payment of damages by reason  
27 thereof.

1 SECTION 2. The selectmen of the town of Brewster  
2 from time to time may make specific repairs on or  
3 improve such right of way or parking area to such  
4 extent as they may deem necessary, but neither the  
5 county of Barnstable, nor any city or town therein,  
6 shall be required to keep such right of way or parking  
7 area in repair, nor shall they be liable for injury  
8 sustained by persons travelling thereon; provided,  
9 that sufficient notice to warn the public is posted  
10 where such way enters upon or unites with an existing  
11 public way.

1 SECTION 3. All expenses incurred by said county  
2 commissioners in connection with such right of way  
3 or parking area shall be borne by the county of  
4 Barnstable, or by such cities and towns therein, and  
5 in such proportions, as said county commissioners  
6 may determine.

1 SECTION 4. Said right of way or parking area shall  
2 not be discontinued or abandoned without authority  
3 therefor from the general court.

1 SECTION 5. Nothing in this act shall be construed  
2 to limit the powers of the department of public health,  
3 or of any local board of health, under any general or  
4 special law.



