

HOUSE No. 53

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC WORKS,
100 NASHUA STREET, BOSTON 14, November 3, 1954.

To the Honorable Senate and House of Representatives.

In compliance with the provisions of section 33 of chapter 30 of the General Laws (Ter. Ed.), as amended by chapter 67 of the Acts of 1948, I have the honor to submit herewith such parts of the annual report of the Department of Public Works as contain recommendations or suggestions for legislative action, accompanied by drafts of bills embodying the legislation recommended. These drafts have been submitted to the Counsel for the House of Representatives for advice and assistance as to the form thereof.

Respectfully submitted,

JOHN A. VOLPE,
Commissioner.

RECOMMENDATIONS.

The Department is recommending legislation this year for the following purposes: —

1. RECOVERING OVERPAYMENTS IN PRO TANTO LAND DAMAGE SETTLEMENTS.

The Department of Public Works is authorized under chapter 79 of the General Laws to make payments pro tanto in connection with land damage settlements for highway takings without prejudice to any right of the property owner to have the remainder thereof assessed by the appropriate tribunal. The proposed legislation would enable the Department to recover money in the event that a court verdict subsequent to the pro tanto payment resulted in an award of damages less than the pro tanto payment. The Department at the present time has no means of recovering any overpayment, although the petitioner, after making a pro tanto settlement with the Department, may go to court and attempt to secure a greater amount. It is our understanding that the federal government follows the recommended procedure.

2. AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS TO ACQUIRE LAND FOR DISTRICT OFFICES.

The Department recommends the attached legislation to amend the existing law so as to include, among the purposes for which land may be acquired by the Department, the purchase or acquisition of land for the building of district offices of the Department.

3. CONCERNING THE ALTERATION OF STATE HIGHWAYS.

The attached legislation is recommended in order to clarify the situation in relation to whether a public notice or hearing is required for the alteration of a state highway as is the case when a state highway is to be laid out and constructed.

4. AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS TO MAKE CHARGES FOR USE AND OCCUPATION OF LAND OR STRUCTURES TAKEN UNDER EMINENT DOMAIN.

In many instances when property owners are notified that their property has been taken in whole or in part for state highway purposes under eminent domain proceedings they have been reluctant to vacate the premises. A typical example of this was the John F. Fitzgerald Expressway, where some owners remained in occupancy for over a year after the taking was made. This legislation is recommended so that in the discretion of the Department it may proceed after due notice to recover for the use and occupancy of the premises when they are not readily vacated by the owner or tenant thereof. Also, it would probably provide a substantial amount of revenue as well as eliminate the rent-free occupancy that these persons have heretofore enjoyed.

5. PROVIDING THAT NO ENTRY IS NECESSARY IN THE CASE OF A TAKING FOR HIGHWAY PURPOSES IF THE ORDER OF TAKING INCLUDES ANY TAKING IN FEE.

This legislation is recommended in an attempt to bring eminent domain proceedings up to date by requiring that no entry is necessary where an order of taking includes takings in fee. It is believed that entry has heretofore been required because takings were originally made only as easement takings whenever a highway was concerned. At that time the highway might not necessarily be built immediately and the property did not become exempt from taxation because the entire title did not pass. Today, however, construction contracts are generally awarded at about the time a taking is filed, and the taking is ordinarily made in fee. This exempts the property from taxation and raises many questions as to what liability exists for insurance purposes, mortgagees, lessees, etc. No entry is required for a taking for a school, a public building, a park, a common or a railroad right of way, and it would appear reasonable to handle the procedure for highways in the same manner.

6. AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS TO TAKE LAND BY EMINENT DOMAIN ON BEHALF OF A RAILROAD CORPORATION.

Under existing statutes the Department may take land on behalf of a railroad corporation only when the taking is in conjunction with the abolition of an existing grade crossing. Several cases have arisen in connection with a new layout crossing a railroad location where it might have been desirable for purposes of alignment or construction costs to relocate a railroad location. In these instances the Department had no statutory means of effecting such relocation or the taking of the necessary rights in land on behalf of the railroad. The purpose of the proposed bill is to give the Department this right.

7. PROVIDING THAT THE DEPARTMENT OF PUBLIC WORKS MAY TAKE BY EMINENT DOMAIN THE FAMILY BURIAL LOT OF THE HEIRS OF CHURCH TERRY.

It appears necessary that legislative authority be secured to acquire and relocate the private burial ground of the heirs of Church Terry located on the next section of the Fall River Expressway to be laid out.

The Department has heretofore acquired by eminent domain parts of cemeteries, but in all instances it was land dedicated as a cemetery but in which no actual graves or burials had been located.

Section 41 of chapter 114 of the General Laws provides that "a public way shall not be laid out or constructed in, upon or through an enclosure used or appropriated for a burial place except by special authority from the general court or, . . . if such enclosure belongs to private proprietors, with their previous consent."

The twelve heirs of Church Terry have assented in writing to the proposed relocation, and the Department desires the special authority of the General Court before proceeding in the matter.

8. RELATIVE TO INDEMNIFICATION OR PROTECTION OF CERTAIN STATE OFFICERS AND EMPLOYEES IN CONNECTION WITH ACTIONS FOR PERSONAL INJURIES OR PROPERTY DAMAGES.

The proposed legislation is considered by this Department to be necessary because from time to time employees of the Department are subjected to claims and suits brought against them by persons alleging personal injuries or property damages arising out of acts of employees of the Department in the performance of their regular duties, which they have performed properly in carrying out their orders and assignments. Under existing legislation there is no requirement that the Attorney General shall defend or otherwise assist or indemnify employees of the Department of Public Works against such claims or suits.

9. PROVIDING FOR THE TAKING BY EMINENT DOMAIN OF LAND FOR ABUTTING SERVICE FACILITIES ON LIMITED ACCESS HIGHWAYS.

Chapter 829 of the Acts of 1950 amended section 7C of chapter 81 of the General Laws and authorized the Department to provide for and designate the location of abutting services in connection with limited access highways. The last sentence of said section 7C was originally passed to allow the Department to acquire land that was isolated by a limited access highway layout. These are two different elements, and the result desired has not been obtained by including both in the present last sentence of section 7C. The purpose of this bill is to clarify the situation.

10. RELATIVE TO EXTENDING THE AUTHORITY OF THE DEPARTMENT OF PUBLIC WORKS TO DO CERTAIN WORK IN TIDAL WATERS ALONG THE COAST LINE.

The proposed legislation would allow the expenditure of capital outlay funds, now available, inside Boston Harbor. The Legislature, in transferring some of the duties from the Port of Boston Commission to the Department of Public Works, Division of Waterways, did not amend section 11 of

chapter 91, which limits the authority of the Department to work "outside of Boston Harbor."

This amendment would (1) carry out the intent of the Legislature in transferring the duties from the Port of Boston Commission; (2) allow the Department to spend funds already appropriated "inside Boston Harbor".

11. RELATIVE TO CHANGING THE DEFINITION OF A GREAT POND.

This act would provide for the changing of the definition of a great pond as it pertains to chapter 131 of the General Laws. At present, a great pond is defined in chapter 131 as a natural pond, the area of which is twenty acres or more. This definition of a great pond is applicable only with reference to fishing, and has no precedent in the Colonial Ordinance of 1641-1647, wherein the rights of the public in ponds over ten acres in extent were stated as including the right of fishing and fowling.

The first enactment of a law altering this guarantee was by chapter 384 of the Acts of 1869, which took from the public the right of fishing in great ponds of less than twenty acres, and conferred the complete control of fishing in these ponds to property owners abutting the pond, and this situation is continued by said chapter 131 of the General Laws.

It appears that this act, if enacted, would achieve a desirable change, and would at the same time eliminate the present confusion caused by the definition of a great pond as contained in chapter 131, General Laws, and that contained in chapter 91, General Laws, whereby a great pond is defined as containing more than ten acres in its natural state. It would also restore to the public the right to fish in ponds between ten and twenty acres, which was taken from them in 1869.

