

HOUSE No. 2531

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 9, 1955.

The committee on the Judiciary, to whom was referred so much of the recommendations of the Department of Public Works (House, No. 53) as relates to 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 (accompanied by bill, House, No. 58), report the accompanying bill (House, No. 2531).

For the committee,

JOSEPH P. GRAHAM.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT TO PROVIDE THAT NO ENTRY IS NECESSARY IN THE CASE OF A TAKING FOR HIGHWAY PURPOSES BY THE DEPARTMENT OF PUBLIC WORKS IF THE ORDER OF TAKING INCLUDES ANY TAKING IN FEE.

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 first paragraph of section 3 of chap-
2 ter 79 of the General Laws, as amended, is hereby fur-
3 ther amended by striking out the third sentence, as
4 appearing in section 6 of chapter 172 of the acts of 1938,
5 and inserting in place thereof the following sentence:—
6 Upon the recording of an order of taking by the depart-
7 ment of public works under this section, title to the fee
8 of the property taken or to such other interest therein as
9 has been designated in such order shall vest in the body
10 politic or corporate on behalf of which the taking was
11 made; and the right to damages for such taking by said
12 department shall thereupon vest in the persons entitled
13 thereto unless otherwise provided by law; provided,
14 however, that when a taking by said department, which
15 does not include any takings in fee, is made for the pur-
16 pose of a highway or town way or for ditches or drains
17 for draining the same, the right to damages shall not
18 vest until such way, drain or ditch has been entered
19 upon or possession thereof has been taken for the pur-
20 pose of constructing the same, and if such entry is not
21 made or possession taken within two years of the date
22 of the order, the taking by said department shall be void;
23 and provided, further, that when a taking of any water,
24 water source or water or flowage right is made, the right
25 to damages shall not vest until the water is actually
26 withdrawn or diverted.

1 SECTION 2. Section 6 of said chapter 79, as appear-
2 ing in the Tercentenary Edition, is hereby amended by
3 striking out the second sentence and inserting in place
4 thereof the following sentence:— Such damages shall be
5 paid by the body politic or corporate on behalf of which
6 the taking was made, unless other provision is made by
7 law; but when a taking by the department of public
8 works, which does not include any takings in fee, is
9 made for the purposes of a highway or town way, or of
10 a ditch or drain for draining the same, or for the purpose
11 of abolishing a grade crossing under chapter one hundred
12 and fifty-nine, the amount awarded shall not be payable
13 until entry is made upon the land within the limits of
14 the taking, or possession thereof is taken for the purpose
15 of constructing such way, ditch or drain or for abolishing
16 such grade crossing.

1 SECTION 3. Section 8 of said chapter 79, as amended,
2 is hereby further amended by striking out the third sen-
3 tence, as appearing in section 2 of chapter 251 of the
4 acts of 1943, and inserting in place thereof the following
5 sentence:— If, within two years after the date of an
6 order of taking by the department of public works, which
7 does not include any takings in fee, for a highway or
8 town way or for a ditch or drain for draining the same,
9 entry is made or possession taken thereunder for the
10 purpose of constructing the same, such notice of taking
11 by said department shall also state the date of such
12 entry or taking possession.

1 SECTION 4. The second paragraph of section 16 of
2 said chapter 79, as amended, is hereby further amended
3 by striking out the first sentence, as appearing in section
4 3 of said chapter 251, and inserting in place thereof the
5 following sentence:— And, without limiting the fore-
6 going provisions of this section, if within two years after
7 the date of an order of taking by the department of
8 public works, which does not include any takings in fee,
9 for a highway or town way or for a ditch or drain for

10 draining the same, entry is made or possession taken
11 thereunder for the purpose of constructing the same, a
12 petition for the assessment of damages may be filed at
13 any time prior to the expiration of six months after the
14 recording under section three of a certificate of such
15 entry or taking possession.