

SENATE No. 391

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Twenty-Six.

AMENDMENTS OFFERED BY MR. HAIGIS TO SENATE BILL NO. 377.

Mr. Haigis moves that the bill be amended as follows:—

1 In section seven, by adding after the word "Laws",
2 in line three, the words "or any other law applicable
3 thereto"; and by inserting after the word "taken", in
4 line seven, the words "And provided, however, that
5 nothing in this act contained shall be so construed as
6 to authorize any diminution of the running daily flow
7 in the stream of eighty-five million gallons per day.
8 No water to be diverted in any year from May thirty-
9 one to December first.";

By striking out section eight and inserting in place thereof the following new sections:—

1 SECTION 8.

2 *Subsection a.* Said board, upon the application of
3 the owner of any real estate taken for any operations
4 under this act, or the owner of any real estate entered
5 upon or used, or of any real estate injured by the taking
6 of any waters or any excavations or constructions by
7 this act authorized, whether said real estate is within
8 or without the commonwealth, or of any real estate
9 not taken but directly or indirectly decreased in value

10 by this act, or the doings of said board thereunder,
11 situate in the towns of Hardwick, Ware, New Braintree,
12 Hubbardston, Oakham, Barre or Palmer, above or be-
13 low the point of points of diversion of the waters of
14 the Ware river as by this act authorized, may agree
15 with such owner upon the damages to be paid for such
16 taking, injury or decrease in value, and if said board
17 and the owner of any real estate cannot agree upon
18 such damages, such owner may within two years after
19 the first taking of water, or of land, or of rights therein,
20 for said purposes by this act defined, under the right
21 of eminent domain, file in the clerk's office of the
22 superior court for the county in this commonwealth in
23 which the said land or lands lie, a petition for the
24 determination of such damages; and thereupon said
25 court, after notice, by publication in such form as the
26 court may order in some newspaper published in such
27 county, that all persons entitled to file such petitions
28 will be heard by said court on a day in said notice
29 named; and after such hearing said court shall from
30 time to time appoint one or more commissions, each
31 consisting of three disinterested persons, and may after
32 notice and hearing fill any vacancy occurring in any
33 such commission until all petitions referred to it have
34 been heard and determined. Each of said commissions
35 shall, after notice and hearing, determine the damages
36 specified in all such petitions as may be filed as afore-
37 said and referred to it by said court; and if the owner
38 of any such real estate, no part of which is taken but
39 which is decreased in value, shall in the petition afore-
40 said signify his willingness to surrender the real estate,
41 or if there is a mill thereon, the real estate and ma-
42 chinery thereon, to the commonwealth, the commission
43 shall also determine the value of such real estate, or

44 real estate and machinery, and interest may be in-
45 cluded in such damages and in such value at such rate
46 and for such time as the commission may deem just
47 and equitable. Said commissions shall determine the
48 damage to and value of real estate, machinery and
49 business, and from time to time report their deter-
50 minations on the petitions of such owners to said court.

51 In case of any individual, firm or corporation owning
52 on the first day of April in the year nineteen hundred
53 and twenty-six an established business, including that
54 of farming or operation of dairies, on land in any of
55 the towns hereinabove named, whether the same shall
56 be taken or not under this act, or the heirs or personal
57 representatives of such individual or firm, shall deem
58 that such business is decreased in value by the carrying
59 out of this act whether by loss of custom or otherwise,
60 and unable to agree with said board as to the amount
61 of damages to be paid for such injury, such damages
62 shall be determined and paid in the manner hereinbe-
63 fore provided. The words "real estate" as used in
64 this section shall include water rights, and in case of
65 mills all machinery thereon.

66 *Subsection b.* Said board shall, upon agreeing upon
67 any damages, or upon the acceptance by said court of
68 any determination specified in the preceding subsec-
69 tion, notify the owner that they will pay the damages,
70 or, in case the petitioner offers to make surrender, if
71 they so prefer, they will pay the value so agreed upon
72 or determined, and if any such owner shall in accord-
73 ance with such notice and within one year after being
74 so notified, deliver a release of such damages or a
75 deed of the real estate, to and satisfactory to said
76 board, said board shall certify to the treasurer of the
77 commonwealth the amount to be paid such owner, and

78 said treasurer shall pay the same from the proceeds of
79 the bonds hereinafter provided for. Said board, or any
80 person whose property is taken under the right of
81 eminent domain, or entered upon or injured by the
82 taking of said water, or other operation or operations
83 authorized by this act, if dissatisfied with any de-
84 termination of damages made by any commission, may,
85 within ninety days after such determination is filed in
86 court, claim a trial by jury to determine such damages,
87 and thereupon the damages shall be determined by a
88 jury in the superior court as provided in this act.

89 *Subsection c.* Said board shall incur such expenses
90 as may be required in constructing, maintaining and
91 operating the water works by this act committed to
92 their charge, and for payment of the damages sus-
93 tained by any of said towns, or the inhabitants thereof,
94 by reason, because, of, or incidental to, any inter-
95 ference by any taking, operation or proceeding author-
96 ized by the provisions of this act, with the use or en-
97 joyment by either of said towns of any existing sewage
98 system or methods of sewage disposal, or with drainage
99 rights or privileges, to which any such town or its
100 inhabitants may be entitled.

101 *Subsection d.* Any resident of either of the towns
102 of Hubbardston, New Braintree, Barre, Hardwick,
103 Ware, Oakham and Palmer, employed by any cor-
104 poration, partnership or individual, at the time when
105 the plant of such corporation, partnership or individual
106 is taken, and work therein stopped, on account of, or
107 due to any action authorized by the provisions of this
108 act, and who is obliged, by reason of such taking or
109 such action, to seek employment elsewhere, shall have
110 the right within one year from the termination of such
111 employment as aforesaid, to file a claim for damages

112 with said board, and if such claim is not settled and
113 satisfied within sixty days from the filing thereof, he
114 may bring a bill in equity in the superior court for the
115 county in which such town is situated for the ad-
116 judication and collection of such damage. Any num-
117 ber of persons deprived of employment as aforesaid
118 may unite in such bill, and the withdrawal of any one
119 shall not prejudice the rights of others.

120 It shall be the duty of the court to ascertain whether
121 or not such claimants have resided and have been em-
122 ployed and deprived of employment as specified in this
123 act, and if so to issue a decree in favor of each claimant
124 to recover the actual damage which he has suffered by
125 reason of such loss of employment, not however to
126 exceed the sum of his wages for six months at the
127 rate of wages paid to him for the last six months prior
128 to such suspension of employment.

129 No person shall be entitled to receive compensation
130 under this section unless he shall have been employed
131 as aforesaid in one of said towns continuously from the
132 first of June nineteen hundred and twenty-six up to the
133 date of the taking of the property wherein said person
134 is so employed, or the time of the loss of such em-
135 ployment as aforesaid caused by any section authorized
136 by the provisions of this act.

137 No stockholder of any corporation whose plant is
138 taken under the provisions of this act shall be en-
139 titled to receive compensation under this section.

140 *Subsection e.* In the event of any loss of taxable,
141 including any mill property, with buildings and ma-
142 chinery and operating appliances connected therewith,
143 or any impairment or depreciation in its taxable value,
144 due to the taking of lands, or waters of Ware river,
145 or any action relating thereto, under authority of this

146 act, and located within any of said towns, to wit,
147 Hubbardston, New Braintree, Barre, Hardwick, Ware,
148 Oakham and Palmer, and in operation prior to June
149 first, nineteen hundred and twenty-six, and so de-
150 pendent in whole or in part upon water power derived
151 from said Ware River, the commonwealth shall, upon
152 proof of such loss of taxable property, or impairment
153 or depreciation of taxable value of any such lands or
154 mill property, including lands, buildings, machinery
155 and appliances, annually pay to such town, wherein
156 said property is situate an amount equal to that which
157 said town would receive for taxes upon or from said
158 property upon the average of assessed values of such
159 lands, mill properties, buildings and machinery, for the
160 three years next preceding said June first, nineteen
161 hundred and twenty-six, diminished, however, by the
162 amount of taxes of such property currently received
163 by said towns through current taxation.

164 *Subsection f.* Said board shall, as part of the ex-
165 penses of operations authorized by this act, pay to
166 each of said towns such reasonable sums as may be
167 required to reimburse any one of such towns for ex-
168 penses of police protection incident to the conduct of
169 such operations within the limits of any such towns.

1 SECTION 9. Within one year from the passage of
2 this act, the commonwealth shall pay to the county of
3 Hampshire the sum of one hundred and seventy-five
4 thousand dollars, unless the county commissioners of
5 said county of Hampshire within thirty days after the
6 passage of this act shall determine by a majority vote
7 of the board not to accept said sum. If the county
8 commissioners for said county of Hampshire, by a

9 majority vote of the board, shall, as provided herein,
10 decide not to accept said sum, then upon the petition
11 of said board of county commissioners to the governor
12 and council, and after reasonable notice and due hear-
13 ing upon said petition, the governor and council may
14 fix the amount of said sum to be paid by the com-
15 monwealth to the county of Hampshire. The sum of
16 money paid in accordance with any of the provisions
17 of this section shall be accepted by the county of
18 Hampshire in lieu of any and all damages of any and
19 every kind and nature, whether consequential or other-
20 wise, in any way suffered or sustained by the county
21 of Hampshire by reason of the passage of this act; and

By striking out section fourteen, and inserting in place thereof the following new section: —

1 SECTION 14. The towns of Hubbardston, New Brain-
2 tree, Barre, Hardwick, Ware, Oakham and Palmer,
3 may take from the Ware river above the points of
4 diversion as by this act provided, so much of the water
5 thereof, as they, or either of them, have already been,
6 or may hereafter be, authorized by the legislature to
7 take for supplying their inhabitants with water, and
8 in case either of said towns shall hereafter on its
9 application therefor, be so authorized to take such water,
10 it shall pay to the commonwealth, to be paid into the
11 sinking fund, for the bonds authorized by this act, a
12 fair proportion of the cost incurred by the common-
13 wealth for the acquisition under the provisions of this
14 act of the waters of said river, or rights therein, and
15 for the construction, maintenance and operation of such
16 works and structures as are by this act provided for,
17 the said proportion to be determined by the chief
18 engineer of the metropolitan district commission, an

19 engineer appointed by such applicant town, and if
 20 they cannot agree such proportion shall be determined
 21 by a master to be appointed by the superior court on
 22 the petition of the commonwealth or said applicant
 23 town, and the report of the master when affirmed shall
 24 be final and conclusive on all parties.