

HOUSE No. 812.

[Mr. COOK of Boston gives notice that he will move to substitute this bill for the report of the committee on Harbors and Public Lands, leave to withdraw.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-four.

AN ACT

To incorporate the Massachusetts Ship Canal Company.

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. Oliver Ames, Martin P. Kennard,
2 Reuben E. Demmon, John H. Dane, Benjamin
3 J. Berry, Charles A. Campbell, William F.
4 Humphrey, Frank Battles, Frank R. Whiteside,
5 Henry N. Berry, Francis W. Breed, Isaac C.
6 Wyman, Thomas Appleton, Joseph A. Hurd,
7 Charles P. Mudge, J. T. Wilson, and Elihu
8 Thomson, their associates and successors, are

9 hereby made a corporation by the name of the
10 Massachusetts Ship Canal Company, and as such
11 shall have perpetual succession and by that name
12 may sue and be sued, plead and be impleaded in
13 law and equity, and purchase, receive, hold and
14 convey real and personal estate, and the same
15 retain to themselves, their successors and assigns,
16 so far as it shall be necessary for their accommo-
17 dation and convenience in the transaction of their
18 business, and such as is in good faith conveyed
19 to them by way of security or in satisfaction of
20 debt, and it shall be lawful for said corporation to
21 receive in payment of subscription to the capital
22 stock of said corporation, under such regulations
23 and restrictions as may be prescribed by them,
24 any real or personal property that may be offered
25 by persons wishing to subscribe to the capital stock
26 of said corporation; and said corporation shall
27 have the right to sell, convey and dispose of said
28 real or personal property at any such time and on
29 such terms as may best subserve the purpose of
30 building and maintaining said canal and harbor
31 contemplated by this act, with all the privileges
32 and subject to all the duties, restrictions and
33 liabilities set forth in all general laws which now
34 are or may hereafter be in force relating to rail-
35 way corporations, so far as they may be appli-
36 cable, except as hereinafter provided.

1 SECT. 2. The capital stock of said corporation
2 shall be seven and a half million dollars divided
3 into shares of one hundred dollars each; and said

4 corporation may issue coupon or registered bonds
5 to an amount not exceeding in the aggregate the
6 authorized capital stock of said corporation.
7 Such bonds shall be issued in conformity with
8 the provisions of sections sixty-two to seventy-
9 three, inclusive, of chapter one hundred and
10 twelve of the Public Statutes so far as applicable,
11 and said corporation may mortgage or pledge as
12 security for the payment of such bonds a part or
13 all of its real or personal property or franchise
14 then owned or thereafter to be acquired.

15 Said corporation may issue stock and bonds in
16 payment for labor performed and material fur-
17 nished in the construction of said canal, and of
18 property acquired for that purpose, and to provide
19 means for funding its floating debt or for the pay-
20 ment of money borrowed for any lawful purpose.

1 SECT. 3. Said corporation may locate, con-
2 struct, maintain and operate a canal, beginning
3 at some convenient point in Nantucket sound,
4 near the point where Bass river, so called, in the
5 towns of Dennis and Yarmouth, empties into said
6 Nantucket sound, and extending thence to some
7 convenient point in Massachusetts bay, or Cape
8 Cod bay, following the bed of said Bass river
9 during so much of its course as may be deemed
10 advantageous to said corporation; may locate,
11 construct and maintain all such wharves, docks,
12 structures, and works as may be convenient or
13 necessary, and may maintain and operate steam
14 vessels for transportation or steam tugs, or use

15 any other means or methods for assisting vessels
16 in their approach to and passage through and
17 from the canal. Said canal when constructed
18 shall have a depth of not less than twenty-three
19 feet at mean low water, and shall be of a width
20 of not less than one hundred feet at the bottom,
21 and not less than three hundred feet at the top.
22 All materials excavated from tide-waters shall
23 be disposed of to the satisfaction of the harbor
24 and land commissioners, and the construction of
25 the approaches from deep water to either end of
26 the canal shall be subject to their supervision.
27 Said canal when completed shall be under the
28 jurisdiction of the harbor and land commis-
29 sioners.

1 SECT. 4. Said corporation may lay out its
2 canal not exceeding one thousand feet wide, and
3 shall file the location thereof within six months
4 from the passage of this act with the county com-
5 missioners for the county of Barnstable, defining
6 the courses, distances and boundaries thereof.
7 But said corporation shall not commence the con-
8 struction of its canal until five hundred thousand
9 dollars of its capital stock has been subscribed
10 and one hundred thousand dollars thereof paid in
11 cash to the treasurer of the corporation.

1 SECT. 5. Said corporation may from time to
2 time take by purchase or otherwise land and
3 materials necessary for making or securing its
4 canal, breakwaters, basins, docks, wharves, or

5 other structures or works, in the manner in which
6 land or material is taken for the construction of
7 railroads.

1 SECT. 6. Said corporation shall pay all dam-
2 ages occasioned by laying out, making and main-
3 taining its canal, and by taking any land or
4 materials therefor; and such damages shall on
5 the application of either party be estimated by
6 the county commissioners in the manner provided
7 in laying out, making and maintaining railroads.

1 SECT. 7. Either party, if dissatisfied with the
2 estimate of the county commissioners, may at any
3 time within one year after the award of the county
4 commissioners has been made, apply for a jury to
5 assess the damages. The proceedings thereon
6 shall be the same as for the recovery of damages
7 for land taken by railroad companies.

1 SECT. 8. The Massachusetts Ship Canal Com-
2 pany shall, within six months from the passage of
3 this act, apply to the boards of railroad com-
4 missioners and of harbor and land commissioners,
5 who, for the purposes hereinafter stated, are con-
6 stituted a joint board, to determine what provision
7 shall be made by the canal company for the
8 crossing of said canal by the New York, New
9 Haven and Hartford Railroad Company, and for
10 crossings for the public where the canal cuts
11 through highways. Said joint board, after giving
12 to all parties interested such notice as they shall

13 deem sufficient, shall determine said matters, and
14 the decision of a majority of said joint board shall
15 be final. Said canal company shall comply with
16 said decision, building and maintaining such
17 bridges and furnishing such means of crossing
18 said canal as shall be determined by said joint
19 board, but the time taken by said joint board,
20 from the date of said petition to said joint board
21 to the date of said decision of said joint board,
22 shall be taken as additional time to all time limits
23 and requirements set forth in this act.

1 SECT. 9. Said canal company shall appoint a
2 superintendent and all necessary assistants for
3 every drawbridge over and ferries across said
4 canal, which superintendents and assistants shall
5 be acceptable to the railroad commissioners.
6 Said superintendent shall have full and absolute
7 control over the drawbridge and ferries under his
8 charge, subject to such rules and regulations as
9 may from time to time be made by or approved
10 by said railroad commissioners. In case of injury
11 to or destruction of the railroad bridge over the
12 canal, the railroad company may repair or rebuild
13 it, and recover the reasonable expense thereof
14 from the canal company in an action of contract,
15 unless such injury or destruction was caused by
16 the fault of the railroad company, or unavoidable
17 casualty.

1 SECT. 10. The New York, New Haven and
2 Hartford Railroad Company shall have its loca-

3 tion, not exceeding five rods in width, upon any
4 land owned or located upon by said canal com-
5 pany, up to the bridge where it crosses the canal,
6 on each side thereof : *provided*, that all reasonable
7 use of said location by the said canal company for
8 the purpose of operating its canal, and under the
9 direction of the railroad commissioners, shall be
10 permitted by the railroad company without pay-
11 ment of rent to the railroad company.

1 SECT. 11. Whoever unnecessarily opens or
2 obstructs any draw without the consent of the
3 superintendent, or without such consent makes
4 fast or moors any skow, raft or other vessel to a
5 bridge within wake of the draw, shall pay a fine
6 of not less than three dollars nor more than fifty
7 dollars.

1 SECT. 12. Whoever wilfully injures or dam-
2 ages any bridge, wharf or pier, or wilfully dis-
3 turbs or hinders the superintendent in the dis-
4 charge of his duties, shall forfeit to said canal
5 company for each offence a sum not exceeding
6 one hundred dollars, and be further liable in
7 damages to the Massachusetts Ship Canal Com-
8 pany.

1 SECT. 13. The provisions relating to draw-
2 bridges contained in sections one hundred and
3 forty-eight to one hundred and fifty-five, inclu-
4 sive, of chapter one hundred and twelve of the
5 Public Statutes, shall extend to said railroad

6 bridge so far as applicable, except that a rail-
7 road train shall be allowed five minutes to cross
8 said draw, instead of fifteen minutes, as provided
9 in section one hundred and fifty of said chapter.
10 And the same penalties and forfeitures provided
11 in section one hundred and fifty-four of said
12 chapter shall also be in force, and may be re-
13 covered of the New York, New Haven and
14 Hartford Railroad Company, or any engineer or
15 any superintendent of said bridge, in like manner
16 as therein provided for the violation of any of
17 the provisions of sections one hundred and fifty-
18 one and one hundred and fifty-three of said
19 chapter.

1 SECT. 14. The said canal company may es-
2 tablish for its sole benefit a toll upon all vessels
3 or water-craft, of whatever description, which
4 may use its canal, at such rates as the directors
5 thereof may determine; and may from time to
6 time regulate such use in all respects, as the
7 directors may determine. Said corporation shall
8 also furnish towage through said canal for all
9 vessels or water-craft which require it; for which
10 service it may establish, for its sole benefit, a toll,
11 at such rates as the directors thereof may deter-
12 mine.

1 SECT. 15. Whoever fraudently evades or
2 attempts to evade the payment of any toll, law-
3 fully established under this act, either by mis-
4 representing the register or draught of any vessel,

5 or otherwise, shall pay a fine of not less than fifty
6 nor more than five hundred dollars to be recovered
7 for the benefit of the Massachusetts Ship Canal
8 Company.

1 SECT. 16. To defray the expenses and com-
2 pensate the county commissioners for services
3 rendered under this act, it shall be the duty of
4 said canal company to pay each of said commis-
5 sioners the sum of five dollars per day for time
6 actually spent in the discharge of their duties:
7 *provided*, that said canal company shall not be
8 required to pay either of said commissioners for
9 more than fifty days' service in one year.

1 SECT. 17. Whoever wilfully and maliciously
2 obstructs the passing of any vessel or steam-tug
3 or other water-craft, in said canal, or obstructs
4 the approaches to said canal within two thousand
5 feet of either extremity thereof, or in any way
6 injures said canal, or its banks, breakwaters,
7 docks, wharves, locks, gates, or other structures
8 or works, or anything appertaining thereto, or
9 any materials or implements for the construction
10 or use thereof, or aids or abets in such trespass,
11 shall forfeit to the use of the corporation, for
12 each offence, treble the amount of damages
13 proved to have been sustained thereby, to be
14 recovered in an action of tort in the name of the
15 corporation; and may further be punished by a
16 fine not exceeding one thousand dollars, or im-
17 prisonment for a term not exceeding one year.

1 SECT. 18. Said corporation shall pay to the
2 secretary of the Commonwealth, on receiving the
3 certificate of corporation, the sum of fifty dollars;
4 and shall also pay to the treasurer of the Com-
5 monwealth such sum of money as shall be fixed
6 by the governor and council as compensation for
7 the services and expenses of the boards of rail-
8 road commissioners and of harbor and land com-
9 missioners for performing the duties imposed on
10 them as a joint board under the provisions of this
11 act. Said allowance for expenses shall include
12 the compensation for such expert engineers as
13 may be employed by said joint board.

1 SECT. 19. Said corporation shall not be re-
2 quired to pay any taxes to the Commonwealth
3 until the canal shall have been opened for use for
4 three years. And until the expiration of said
5 three years the property of said corporation shall
6 be exempt from local taxation, except that the
7 towns of Dennis and Yarmouth may tax the real
8 estate taken by said corporation at a value not
9 exceeding the assessed valuation at the time of
10 such taking.

1 SECT. 20. Unless before the first day of Octo-
2 ber in the year eighteen hundred and ninety-five
3 five hundred thousand dollars of said capital stock
4 has been subscribed and one hundred thousand
5 dollars paid in and actually used for the construc-
6 tion of said canal, this charter may be declared
7 void by the supreme judicial court, on the appli-
8 cation of any citizen of this Commonwealth.

1 SECT. 21. Said corporation shall, before the
2 first day of January in the year nineteen hundred,
3 construct or otherwise complete said canal. And
4 if said corporation shall fail to fulfil any of the
5 obligations of this act, said corporation shall
6 thereupon cease to exist; and all rights of way,
7 buildings, machinery or other property outstand-
8 ing in the name of said corporation shall become
9 the property of the Commonwealth.

1 SECT. 22. This act shall take effect upon its
2 passage.

