

SENATE No. 336.

[Mr. BLANCHARD moves to substitute this bill for the report of the joint special committee on Transit, leave to withdraw, on the petition of William B. Mack and another.]

Commonwealth of Massachusetts.

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

AN ACT

Authorizing the Incorporation of the Bay State
Elevated Railway 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. William B. Mack, East Boston;
2 John Q. A. Brackett, Boston; John W. Corcoran,
3 Boston; Charles T. Chase, Haverhill; John H.
4 Sullivan, East Boston; Robert W. Mack, Boston;
5 and their associates, not less than ten, a majority
6 of whom shall be inhabitants of this Common-
7 wealth, may associate themselves together by
8 articles in writing and become a corporation
9 under the name and title of the Bay State

10 Elevated Railway Company, for the purpose of
11 constructing, equipping, maintaining and operat-
12 ing an elevated railway in Boston and suburbs,
13 to be operated by electricity or any other motive
14 power, the style of which shall be the Mack or
15 any other system determined by submission to
16 the board of railroad commissioners in the man-
17 ner hereinafter provided, namely: if in the judg-
18 ment of the railroad commissioners they shall
19 deem it necessary, this corporation shall con-
20 struct a section of track, not exceeding one half
21 mile, of such form of elevated railway as the
22 railroad commissioners may elect for the purpose
23 of demonstrating publicly the practicability, se-
24 curity and utility of said system to the satisfaction
25 of the railroad commissioners. Said railway shall
26 connect with track or tracks, as near as may be, all
27 the steam railway stations in the city of Boston,
28 and from Post Office square over and through
29 Federal street, to a point near the Marine park
30 in South Boston, and to a point or points in Dor-
31 chester, West Roxbury, passing near Franklin
32 park, to Forest Hills, Brookline and Jamaica
33 Plain, running from a point in or near Haymarket
34 square to a point or points in Charlestown, Cam-
35 bridge and Somerville, Chelsea, Everett, Malden
36 and Medford, Chelsea to East Boston, Winthrop
37 and Revere. And may run through and across
38 such streets and ways as may be fixed under the
39 provisions of this act: *provided, however,* that
40 said railway shall not be constructed upon any
41 part of Boston Common, or upon any public park,

42 nor so as to run lengthwise upon or over any part
43 of Washington or Tremont streets included be-
44 tween Haymarket square and Eliot street, except
45 so far as may be necessary for the purpose of
46 crossing said streets at any point where a location
47 across the same shall be duly granted by the
48 mayor and aldermen of the city. The location
49 of the lines of said railways shall be fixed, except
50 so far as herein designated, in the manner herein-
51 after provided. Upon complying with the pro-
52 visions of this act, preliminary to the establishment
53 of such corporation, the persons named above,
54 with their associates and successors, shall be and
55 remain a corporation under the corporate name of
56 the Bay State Elevated Railway Company, with
57 the powers and privileges and subject to the
58 duties, liabilities and restrictions set forth in this
59 act and in the general laws applicable thereto in
60 section twelve.

1 SECT. 2. The rates of fare charges upon such
2 railways shall not exceed five cents for any single
3 fare within the city limits.

1 SECT. 3. Said corporation or a commission
2 may order the temporary removal of any surface
3 tracks in or on any land or way through or over
4 which any elevated railway aforesaid, its branches
5 or extensions, are to be built, or the relocation of
6 such tracks, also the removal or relocation of any
7 conduits, pipes, wires or poles of any person or
8 corporation which it deems to interfere with the

9 construction or operation of any such railway, its
10 branches or extensions, and the person or corpo-
11 ration owning said tracks, wires, or other property
12 shall comply with said orders. Any person or
13 corporation using or authorized by law to use
14 wires along the route of any such railway may
15 affix them to the structure thereof in such a man-
16 ner and on such terms as said corporation or
17 commission may approve.

1 SECT. 4. Every such corporation may take in
2 fee, by purchase or otherwise, such lands, except-
3 ing parks and other public property, as it may
4 deem necessary and said corporation or commis-
5 sion shall approve, for this railway, its extensions,
6 branches, sidings, stations, terminals, power sta-
7 tions, and yards; and all lands so taken, together
8 with the structures erected thereon, shall be the
9 property of such corporation.

1 SECT. 5. Every such corporation, to make any
2 taking by right of eminent domain, shall cause to
3 be recorded in the registry of deeds for the county
4 of Suffolk a description thereof as certain as is
5 required in a common conveyance of land, with a
6 statement that the same are taken by such cor-
7 poration under the authority of this act, and the
8 lands described in said description shall upon
9 such recording be taken for, and the fee thereof
10 shall vest in, such corporation.

1 SECT. 6. Every such corporation shall pay all
2 damages sustained by any person whose property

3 is so taken by it, and if any such person cannot
4 agree with the corporation as to such damages,
5 the same may be determined by a jury in the
6 superior court for Suffolk county in the manner
7 and subject to the rules of law provided for the
8 determining of damages, for taking land in laying
9 out a steam railroad on petition of such corpora-
10 tion, or of such person therefor, filed in the clerk's
11 office of said court within one year after such tak-
12 ing, and any justice of the superior court shall,
13 upon the filing of any such petition, if requested
14 by the person whose land is taken, require the
15 corporation to give security to the satisfaction of
16 said justice for the payment of all damages which
17 may be awarded by a jury for the property taken
18 and costs; and if upon petition of said owner
19 and notice to the adverse party the security ap-
20 pears to said justice to have become insufficient,
21 he shall require the corporation to give further
22 security to his satisfaction, and all the right or
23 authority of the corporation to enter upon or use
24 the land or other property, except for making sur-
25 veys, shall upon such request be suspended until
26 it gives the security required. Judgment shall be
27 entered upon the determination of such jury and
28 costs shall be taxed and executions issued in favor
29 of the prevailing party, as in civil cases.

1 SECT. 7. Every such corporation shall pay all
2 damages to any estate caused by any act done by
3 any person acting for it under authority of section
4 eight, and all damages to any estate abutting on

5 a public way or place along and above which any
6 railway aforesaid is built, caused by any structure
7 of said railway on and above that part of the way
8 or place on which his estate abuts; and the owner
9 of any estate so damaged may, after the time such
10 act shall be done or such structure be built, and
11 within one year from said time, have, in the man-
12 ner hereinbefore provided, a jury to determine
13 once for all whether such estate is or is not in-
14 jured by any such act or by any structure so situ-
15 ated; if the jury are of the opinion that the estate
16 is so injured they shall find for the plaintiff in
17 such amount as they shall determine the estate is
18 injured over and above any benefit done to it by
19 the building and operation of said railway, and if
20 they are of opinion that such estate is not so in-
21 jured they shall find for the defendant. Judg-
22 ment shall be entered on the finding of such jury
23 and costs shall be taxed and execution issued for
24 the prevailing party, as in civil cases.

1 SECT. 8. Said corporation or commission may
2 remove the buildings from any or all lands taken by
3 it, and may sell or lease for improvement or other-
4 wise any part of, or estate or interest in, any lands
5 or rights so taken, whenever the same shall in the
6 opinion of said corporation or commission, cease
7 to be required for the purposes of this act. And
8 any person or corporation acting under authority
9 of this act may enter into and upon any lands,
10 and make surveys and examinations, and place
11 and maintain marks therein; and may do all other

12 acts therein included incidental to such surveys,
13 examinations, and placing and maintaining marks.

1 SECT. 9. Every such corporation may produce
2 or manufacture electricity, or may make contracts
3 with any person or corporation authorized to pro-
4 duce or manufacture electricity for any purpose,
5 for supplying electricity for the motive power of
6 its railway and other uses, and such person or
7 corporation is hereby authorized to enter into
8 contract for said purpose, and any such corpora-
9 tion may lease the property and rights of any
10 corporation operating a street railway in said
11 city, or any such street railway corporation may
12 lease the property and rights of said such first
13 specified corporation, provided such lease be ap-
14 proved by the board of railroad commissioners
15 and the mayor and aldermen.

1 SECT. 10. Every such corporation, for the pur-
2 pose of procuring and constructing its elevated
3 railway, branches, extensions, terminals, and other
4 structures, and for procuring rails, engines, cars,
5 and other equipment for its railway, issue, to an
6 amount not exceeding the amount of its capital
7 stock actually paid in, bonds payable in not more
8 than fifty years from the date of issue, and bear-
9 ing interest at a rate not exceeding six per cent.
10 per annum, payable semi-annually.

1 SECT. 11. Every such corporation may secure
2 its bonds by mortgage of its property, contract

3 and franchises, and may include therein property
4 to be thereafter acquired, and may reserve therein
5 the right to sell or dispose of any personal prop-
6 erty covered by said mortgage which may become
7 worn or otherwise unfit for use, provided an equiv-
8 alent in value is substituted therefor; but such
9 mortgage shall give to the mortgagee, in case
10 of a default therein, only the power to construct,
11 maintain, equip and operate such railway accord-
12 ing to the terms of said contract, and to keep and
13 use for said purposes all property acquired by the
14 mortgagor and specified in the mortgage, and the
15 right to sell or mortgage said power and property
16 to others, but to be exercised and used only for
17 the purpose of constructing, maintaining, equip-
18 ping and operating such railway, its branches and
19 extensions, as aforesaid.

1 SECT. 12. Every such corporation shall, for
2 the purpose of taxation, be deemed a street rail-
3 way corporation, and sections one hundred and
4 six to one hundred and twelve, inclusive, sections
5 one hundred and forty-three to one hundred and
6 forty-seven, inclusive, sections one hundred and
7 seventy to one hundred and seventy-nine, inclu-
8 sive, sections one hundred and ninety-five to one
9 hundred and ninety-seven, inclusive, and sections
10 two hundred and one to two hundred and eight,
11 inclusive, of chapter one hundred and twelve of
12 the Public Statutes, and sections nine to fourteen,
13 inclusive, sections eighteen and nineteen, sections
14 thirty-seven, forty-three, and sections fifty-six to

15 sixty-three, inclusive, of chapter one hundred and
16 thirteen of the Public Statutes, amended to con-
17 form to the provisions of this act, shall apply to
18 every such corporation, and the shares of any in-
19 crease of its capital stock made for carrying out
20 any of the provisions of this act shall be disposed
21 of in the manner provided by chapter three hun-
22 dred and fifteen of the acts of eighteen hundred
23 and ninety-three for disposing of the shares of
24 the increase of capital stock of steam railway
25 companies.

1 SECT. 13. The supreme judicial court and any
2 justice thereof, and the superior court and any
3 justice thereof, shall have jurisdiction in equity
4 to compel compliance with the provisions of this
5 act, and to enforce the orders of said corporation
6 or commission or any officer made under the
7 authority of this act and to prevent violations
8 of any of the provisions thereof.

1 SECT. 14. Chapters four hundred and seventy-
2 eight and four hundred and eighty-one of the
3 acts of the year eighteen hundred and ninety-three
4 are hereby repealed.

1 SECT. 15. This act shall take effect upon its
2 passage.

