

SENATE No. 342.

Commonwealth of Massachusetts.

SENATE, April 13, 1903.

The committee on Drainage, to whom was referred the petition (with accompanying bill, Senate, No. 242) of the mayor of the city of Cambridge that the cities of Cambridge and Somerville and the towns of Arlington and Belmont be authorized to improve the condition of Alewife Brook, Wellington Brook and Little River, reports the accompanying bill.

For the committee,

SAMUEL COLE.

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Three.

AN ACT

To authorize the Cities of Cambridge and Somerville and the Towns of Arlington and Belmont to improve the Condition of Alewife Brook, Little River and Wellington Brook.

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. At any time or times within five
2 years from the passage of this act, the cities of
3 Cambridge and Somerville and towns of Arling-
4 ton and Belmont, acting through the special com-
5 mission hereinafter referred to, at their joint
6 expense, for the purpose of surface drainage, may
7 widen, fill, clear, grade, deepen, alter the channel
8 of, wall up, cover and otherwise improve, in
9 whole or in part, Alewife brook from its junction
10 with Mystic river to its junction with Little river,
11 and Little river from its junction with Alewife
12 brook to the Arlington line, and Wellington brook
13 from Little river to Wellington street.

1 SECTION 2. The general scheme for said
2 widening, filling, clearing, grading, deepening,
3 walling up, covering, altering the channels and

4 improvement of said brooks and Little river,
5 within the limits of said cities and towns, shall be
6 first agreed upon by a special commission, con-
7 sisting of the mayor of the city of Cambridge, the
8 mayor of the city of Somerville, the chairman of
9 the selectmen of the town of Arlington and the
10 chairman of the selectmen of the town of Bel-
11 mont, for the time being, and shall be executed
12 and maintained by said special commission. Said
13 special commission may make such contracts and
14 appoint such agents as may be necessary to carry
15 out the provisions of this act. No action by said
16 special commission in regard to any matter shall
17 be valid unless taken by unanimous agreement of
18 all the members.

1 SECTION 3. In order to more effectually make
2 said improvements within their respective limits,
3 either city acting by and through its city council
4 and either town may, by purchase or otherwise
5 from time to time, under the same general laws,
6 so far as applicable, for the taking of lands for
7 the laying out of highways in said cities
8 and towns respectively under the provisions
9 of law authorizing the assessment of better-
10 ments, with like remedies to all parties interested,
11 take in fee or otherwise any lands, easements,
12 rights and other property situated within four
13 hundred feet on either side of the centre of the
14 channel of said brooks and Little river. Said
15 special commission may construct, lay and carry
16 any conduit, pipe, drain or other work under any
17 railroad location, street or other way in such a

18 manner as not unnecessarily to obstruct or impede
19 travel thereon; may dig up any such road, street
20 or way and may lay, maintain and repair conduits,
21 pipes and other works beneath the surface thereof,
22 conforming to any reasonable regulations made
23 by the aldermen of the city and selectmen of the
24 town respectively wherein such works are per-
25 formed, and restoring, as far as practicable, any
26 such road, street or way to as good order and
27 condition as the same was in when such digging
28 was commenced, and shall save said cities and
29 towns harmless against all damages for injuries
30 resulting from, arising out of and incident to the
31 doing and construction of any such work. If it
32 is found necessary to have a right of way from
33 Alewife brook to the streets or boulevards near
34 Mystic river, and to take land in excess of the
35 amount hereinbefore authorized, either of the said
36 cities and towns may, as aforesaid, take said
37 right of way and land.

1 SECTION 4. Said cities and towns, within sixty
2 days from the times they respectively shall take
3 any of said property as aforesaid, shall cause to
4 be recorded, in the office of the register of deeds
5 for the county of Middlesex, descriptions of the
6 property taken sufficiently accurate for identifica-
7 tion, and the statement that the same are taken
8 in pursuance of the provisions of this act, which
9 statement shall be signed by the mayor of the city
10 or a majority of the selectmen of the town,
11 respectively, taking the same, and the title to all
12 property so taken within their respective limits

13 shall be vested in the city or town taking the
14 same.

1 SECTION 5. For the purpose of regulating the
2 flow of water in the channels of said brooks and
3 Little river, and preventing the inflow of tide-
4 water from Mystic river into Alewife brook and
5 upon the marshes and meadows along and in the
6 vicinity of said brooks and Little river, said
7 special commission shall construct suitable tide-
8 gates located near Mystic river upon land now
9 owned by the Commonwealth of Massachusetts,
10 and under the care and control of the metropoli-
11 tan water and sewerage board and metropolitan
12 park board; all this to be done under such terms
13 and conditions as may be mutually agreed upon
14 by said special commission and said boards. If
15 said special commission cannot agree with said
16 boards upon said terms and conditions, the same
17 shall be determined by the state board of health.

1 SECTION 6. At any time within ten years from
2 the passage of this act, upon the unanimous
3 agreement of the said cities and towns, the said
4 special commission may at the joint expense of
5 said cities and towns, and in the manner as is
6 provided in section three of this act, take addi-
7 tional land and build a reservoir therein, in con-
8 nection with the tide-gates hereinbefore provided,
9 for the purpose of receiving the flow of said brooks
10 and Little river during the period of high tides
11 when the tide-gates would be closed, and in
12 order to prevent too great a rise in the water

13 level in the channel of either brook or river
14 as aforesaid in times of storms, or at other times.
15 The care and maintenance of the tide-gates and
16 the reservoir, if constructed, and the channels
17 of said brooks and Little river, and the keeping
18 of the same clear and free from vegetable growths
19 and other obstructions, shall be vested in the said
20 special commission.

1 SECTION 7. Any person entitled by law to any
2 damages, whether by the taking of or injury to
3 his property, under the authority of this act, may
4 have such damages determined by a jury in the
5 superior court in the county of Middlesex, by
6 petition therefor under the same rules of law, as
7 far as applicable, as damages are determined for
8 the taking of lands for highways, respectively, in
9 the said cities of Cambridge and Somerville and
10 towns of Arlington and Belmont.

1 SECTION 8. At any time within three years
2 after the taking of any lands or property under
3 the provisions of this act, betterments may be
4 assessed for said taking and for the expenses and
5 costs of carrying out the provisions of this act,
6 under the general laws authorizing the assess-
7 ment of betterments in said cities and towns
8 respectively, with like remedies to all parties
9 interested. Said betterments to be assessed by
10 said special commission, and the proceeds of such
11 betterments shall be divided among said cities
12 and towns in the proportions hereinafter stated.

1 SECTION 9. The expenses and costs incurred
2 as provided in this act, for damages for land and
3 other property rights taken, shall in the first
4 place be paid by the city or town originally liable
5 as provided in this act for such damages. These
6 expenses, costs and damages so paid, and the cost
7 and expense of constructing and carrying out and
8 maintaining from year to year all the works herein
9 authorized, shall be computed by said special com-
10 mission, and each city and town shall pay or be
11 reimbursed by the others therefor so that the net
12 expense to each shall be in the proportions of fifteen
13 per centum to the city of Somerville, twenty per
14 centum to the town of Belmont, twenty-two per
15 centum to the town of Arlington, and forty-three
16 per centum to the city of Cambridge. The de-
17 termination of the amount such city and town
18 shall pay and the auditing and approval of the
19 bills shall be done by said special commission.
20 Each city and town in an action of contract may
21 recover of any other city or town its proportion
22 of the expenses and costs incurred by it under the
23 provisions of this act. Each city and town shall
24 be liable in an action of contract for its propor-
25 tional share, as above stated, to any person with
26 whom said special commission may incur any
27 obligation under this act.

1 SECTION 10. Each of said cities or towns may
2 from time to time issue notes, bonds or scrip as
3 either may require in excess of the debt limit pre-
4 scribed by law, each of said notes, bonds or scrip

5 to be designated on the face thereof "Improve-
6 ment of Alewife Brook Loan," and shall use the
7 proceeds to meet the costs to be paid by them
8 respectively under this act. Said notes, bonds or
9 scrip shall bear interest payable semi-annually not
10 exceeding four per centum per annum, payable at
11 such times, not less than ten years nor more than
12 forty years from their dates, as shall be determined
13 respectively by vote of the city council of the city
14 of Cambridge and city of Somerville or by vote of
15 the town of Arlington and town of Belmont and
16 expressed upon the face of the bonds, notes or
17 scrip. Said cities or towns may sell said notes,
18 bonds or scrip, or any part thereof, from time to
19 time, or pledge the same for money borrowed for
20 the above purpose, but the same shall not be sold
21 or pledged for less than the face value thereof.
22 The provisions of the twelfth, thirteenth, four-
23 teenth, fifteenth, sixteenth and seventeenth sec-
24 tions of chapter twenty-seven of the Revised
25 Laws shall, so far as applicable, apply to this act.

1 SECTION 11. The supreme judicial court, or
2 any justice thereof, sitting in equity shall, in term
3 time or vacation, upon the petition of any city,
4 town or said special commission, or of the attorney
5 of any such petitioner, have jurisdiction in equity
6 to enforce and prevent any violation of the pro-
7 visions of this act.

1 SECTION 12. This act shall take effect upon its
2 passage.