

HOUSE No. 242.

Commonwealth of Massachusetts.

To the Honorable the Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled.

The Metropolitan Water and Sewerage Board was requested, by chapter 105 of the Resolves of the year 1903, to re-examine the subject of the condition of Spot Pond brook in conjunction with the cities of Malden and Melrose, and to report to the present General Court what modifications could be made, if any, in the plan submitted by the Board in the year 1903, with a view to lessening the expense of the improvement suggested, and what limitations might be made as to the amounts of the expense therefor which should be assessed on the cities of Malden and Melrose.

The Board caused a careful re examination to be made by its engineers of the plan which had been submitted to the General Court, and likewise requested both cities to submit any modifications which they would be able to suggest in the plan for the improvement. The Board had likewise conferences with the official representatives of the two cities, at which, however, no changes in the proposed plan were offered for the consideration of the Board. The engineers of the Board were likewise unable to offer any substantial modifications of the plan, as the Board was of the belief that any such plan should not only provide for immediate necessities, but should also meet the demands which are sure to arise in the near future, and it could not advise the building of works which would have to be superseded in a comparatively short period.

The Board and the representatives of the two cities were also unable to agree upon any apportionment of the expense of the improvement by which certain fixed sums should be contributed by the cities, and the balance be paid by the Commonwealth. For the reasons given in its report, the Board is of the opinion that the troubles which are to be remedied have arisen, to a very large extent, from conditions existing in these cities, and have not to a great degree been occasioned by the operations of the Board. A proper determination, however, of the respective responsibilities and liabilities of the cities and the Commonwealth depends largely upon evidence and upon the solution of legal questions. The Board believes that such a satisfactory determination can be reached only by resort to some legal tribunal or commission appointed by the court, and such tribunal or commission should not only apportion the expenses of the improvement between the two cities and the Commonwealth, in accordance with their just responsibilities and liabilities, but should also determine what sums abutting owners receiving benefits beyond the general advantage should be called upon to pay in betterments.

The Board was requested by the authorities of the city of Melrose to submit with its report a bill which would in its opinion carry out the recommendation of the report last year submitted to the General Court. The Board, therefore, respectfully submits to your consideration the accompanying bill.

Respectfully submitted,

HENRY H. SPRAGUE,
HENRY P. WALCOTT,
JAMES A. BAILEY, JR.,

Metropolitan Water and Sewerage Board.

Jan. 15, 1904.

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Four.

AN ACT

To authorize the Improvement of Spot Pond 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. The metropolitan water and sewerage
2 board is hereby authorized and directed to construct
3 works for the improvement of Spot Pond brook, between
4 Spot pond in the town of Stoneham and tide water in the
5 city of Malden, substantially in accordance with the
6 plans and recommendations of the said board contained
7 in its report to the legislature of the year nineteen hun-
8 dred and three.

1 SECTION 2. The said board, for the purpose of carry-
2 ing out the provisions of the preceding section, may
3 from time to time take in fee or otherwise, by purchase
4 or otherwise, for the Commonwealth or for the city of
5 Malden, or the city of Melrose, as said board shall
6 determine, any lands, easements, rights and any other
7 property which the said board may deem necessary or

8 desirable for carrying out the powers and duties con-
9 ferred upon them by this act. The said board, in order
10 to take any property by right of eminent domain, shall
11 sign and cause to be recorded in the registry of deeds
12 for the county and district in which the property to be
13 taken is situated a description thereof as certain as is
14 required in a common conveyance of land, signed by a
15 majority of the board, and any person whose property is
16 so taken may have compensation therefor as determined
17 by agreement with the board, and if they cannot agree
18 the compensation may be determined by a jury in the
19 superior court for the county where the property is
20 situated, under the same provisions of law, so far as
21 they are applicable, which apply in determining the
22 value of lands taken for highways under chapter forty-
23 eight of the Revised Laws, upon petition therefor by
24 the board or by such person, filed in the clerk's office of
25 said court against the Commonwealth or the city for
26 which the property is taken, within one year after the
27 taking. If upon trial damages are increased beyond the
28 award of the board, the petitioner shall recover costs and
29 interest upon such sum as shall exceed the amount of
30 such award; otherwise he shall not recover interest and
31 shall pay costs.

1 SECTION 3. For the purpose of carrying out the pro-
2 visions of this act the treasurer and receiver general shall
3 from time to time, on the request of the said board, issue
4 notes, bonds or scrip in the name and behalf of the Com-
5 monwealth, to an amount not exceeding three hundred
6 thousand dollars, designated on the face thereof "Metro-
7 politan Water Loan." The provisions of chapter four
8 hundred and eighty-eight of the acts of eighteen hundred
9 and ninety-five, providing for a metropolitan water loan,
10 shall apply to such loan.

1 SECTION 4. The supreme judicial court in equity, on
2 application of the metropolitan water and sewerage
3 board or of the city of Malden or the city of Melrose,
4 after such notice as the said court may order, shall ap-
5 point three commissioners who shall, after such notice
6 and hearings as they deem sufficient, and in such manner
7 as they deem just and equitable, determine and make
8 award of the proportion in which the cost of the work
9 authorized by the preceding sections shall be paid by the
10 metropolitan water and sewerage board and the cities of
11 Malden and Melrose. The commissioners shall, if in their
12 opinion any land receives a benefit or advantage from
13 the works authorized by this act beyond the general
14 advantage to all land in said cities, determine the value
15 of such benefit or advantage to such land, and assess
16 upon the same the proportionate share of the
17 cost of such works. Such assessment shall constitute
18 a lien upon the land assessed, and shall be en-
19 forced by the city in which the land lies, in the manner
20 provided for the collection of taxes, and the proceeds
21 thereof shall be paid to the treasurer of the Common-
22 wealth and placed to the credit of the metropolitan
23 water loan fund. The amount of such assessment shall
24 be deducted from the cost of the work authorized herein,
25 prior to the determination and award of the commission-
26 ers fixing the proportion of the cost of such work to be
27 paid by said board and the cities of Malden and Melrose.
28 The amounts so determined shall be paid to the treas-
29 urer of the Commonwealth by the metropolitan water
30 and sewerage board and the cities of Malden and Mel-
31 rose, and the cities of Malden and Melrose are hereby
32 authorized to issue notes, bonds or scrip in such
33 amounts as may be necessary to meet such expenses.
34 The amount to be paid by the metropolitan water and
35 sewerage board shall be paid by the treasurer of the

36 Commonwealth from the funds of the metropolitan water
37 loan.

1 SECTION 5. Upon the completion of the entire work
2 and the payment to the treasurer of the Commonwealth
3 of the sums as determined by the board aforesaid, the
4 cities of Malden and Melrose shall become owners and
5 shall assume the care and control, and shall pay all the
6 expenses of maintaining that portion of the brook lying
7 within their respective limits, excepting that if a cast-
8 iron pipe is laid for the purpose of conveying the water
9 flowing from the territory near Doleful pond, the metro-
10 politan water and sewerage board shall assume the care
11 and control and shall pay the cost of maintaining said
12 pipe.

1 SECTION 6. The cities of Malden and Melrose and
2 the metropolitan water and sewerage board shall keep
3 the channels, conduits, culverts, pipes and other struc-
4 tures under their respective charge in clean and good
5 repair, and shall make such changes as they may find
6 necessary or desirable in the future in such a manner as
7 not to diminish the efficiency of the channels for con-
8 veying water.

1 SECTION 7. Chapter three hundred and seventy-eight
2 of the acts of the year eighteen hundred and sixty-nine is
3 hereby repealed.

1 SECTION 8. This act shall take effect upon its passage.