

SENATE No. 388

The Commonwealth of Massachusetts.

SENATE, May 10, 1910.

The committee on Harbors and Public Lands, to whom was referred the report of the Board of Harbor and Land Commissioners, under chapter 501 of the acts of the year 1909, relative to the improvement of Lynn harbor (House, No. 234), report the accompanying bill.

For the committee,

GEO. H. NEWHALL.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Ten.

AN ACT

Relative to the Improvement of Lynn Harbor.

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. For the purpose of determining the best
2 means of abating the nuisance caused by the existence of
3 tidal flats in Lynn harbor and of improving the capacity
4 of said harbor for navigation and commerce, the governor
5 shall with the advice and consent of the council appoint a
6 commission to consist of three disinterested persons, one
7 of whom shall be named as chairman, two of whom shall
8 be citizens of Lynn and none of whom shall be directly or
9 indirectly interested in the ownership, control or manage-
10 ment of any lands or interest therein which may by the
11 provisions of this act be taken or purchased by the city of
12 Lynn. Said commission shall be known as the commis-
13 sion on the investigation of Lynn harbor, and its term
14 shall expire with its report hereinafter provided for. The
15 compensation of its members shall be paid by the city of
16 Lynn, and shall be such as the governor and council shall
17 from time to time determine after notice to the city of

18 Lynn and the commissioners, and a hearing if the said
19 city or any one of the said commissioners shall so request.
20 The compensation shall be based upon the amount and
21 value of the services by the said commissioners performed.
22 The city council of Lynn shall, by appropriation in the
23 manner provided by law for making appropriations by the
24 said city of Lynn, provide for the payment of such com-
25 pensation.

1 SECTION 2. The commission appointed under the pro-
2 visions of the foregoing section shall proceed to ascertain
3 so far as possible the advisability of abating the nuisance,
4 caused by the existence of tidal flats in Lynn harbor and
5 of improving said harbor for navigation and commerce,
6 and if such abating and improving or either of them shall
7 to said commission seem advisable, then the best and most
8 practical method or methods of doing the same; and for
9 that purpose shall investigate the advisability and neces-
10 sity of filling solid the whole or any part of said flats, the
11 areas and ownerships of lands or interest therein to be
12 taken for the purpose of the abatement of said nuisance
13 and for the improvement of the harbor, the probable costs
14 of such takings and the whole amount of money required
15 to carry to completion any plans suggested by said com-
16 mission for the carrying on of said work. It shall partic-
17 ularly investigate and report as to the ability of the city of
18 Lynn to finance such abatement and improvement and the
19 benefits to be derived by said city. It shall embody in a
20 report to the city council of Lynn, on or before January
21 one, nineteen hundred and twelve, its conclusions and
22 recommendations as to the advisability of undertaking
23 forthwith or at any future time the abatement of said
24 nuisance and the improvement of said harbor for the
25 purpose of navigation and commerce, and, if such under-

26 takings or either of them be deemed desirable, its con-
27 clusions and recommendations as to the best possible plan
28 for carrying out such undertakings, or either of them
29 that is deemed desirable, the probable cost thereof, and
30 the benefits that may be expected to result therefrom.

1 SECTION 3. If the said commission shall report that
2 in its judgment no abatement of said nuisance and no im-
3 provement of said harbor should be forthwith undertaken
4 under the provisions of this act then no further proceed-
5 ings shall be had under this act. If the said commission
6 shall report that in its judgment said nuisance should be
7 abated or said harbor be improved under the provisions of
8 this act, then the city council of Lynn within three months
9 of the date of receiving such report shall either approve
10 or reject the said report. If the city council rejects said
11 report no further proceedings shall be had under this
12 act. If the city council approve said report the question
13 of further proceeding shall be submitted within nine
14 months thereof to the qualified voters of Lynn in the
15 following form:—“ Shall the action of the city council
16 approving the report of the commission on investigation
17 of Lynn harbor be confirmed?” If a majority of the
18 votes cast on said question are in the affirmative then this
19 act shall be in full force and effect. If the majority of
20 said votes are in the negative, then this act shall have no
21 further effect. If the voters confirm said report as pro-
22 vided in this section the governor shall appoint a commis-
23 sion consisting of three disinterested persons who shall
24 have the qualifications required in section one, and the
25 compensation of its members shall be determined and
26 paid as therein provided. Whenever the word “ commis-
27 sion ” is hereinafter used in this act it shall, unless other-
28 wise stipulated or denominated, refer to the commission

29 appointed under this section. Said commission shall be
30 known as the "Commission on the Improvement of Lynn
31 Harbor."

1 SECTION 4. After the said commission on the improve-
2 ment of Lynn harbor shall have been appointed, the city
3 of Lynn may for the purpose of abating said nuisance or
4 of improving said harbor, or both, acquire by gift or
5 purchase or may take in fee by right of eminent domain
6 such flats in said harbor lying within the territorial limits
7 of said city as are necessary for the consummation of any
8 plan suggested by the said commission on the investiga-
9 tion of Lynn harbor, provided that a proper appropria-
10 tion for the carrying out of such plan has been duly made
11 by the city council of Lynn, whether or not said flats are
12 owned or held as appurtenant to any upland bounding on
13 said harbor. The power to take land or interest therein
14 by right of eminent domain, as set forth in this section,
15 shall be exercised on behalf of the city of Lynn by said
16 commission, which shall within sixty days after the taking
17 of any land or interest therein under the provisions of
18 this act file and cause to be recorded in the registry of
19 deeds of the southern district of the county of Essex a
20 description thereof sufficiently accurate for identification
21 and a statement of the purpose for which it was taken,
22 which shall be signed by a majority of the members of
23 said commission. The filing of such description and
24 statement shall constitute a taking in fee by the said city
25 of Lynn. But no land shall be so taken or acquired until
26 the city council of Lynn shall have duly made an appro-
27 priation therefor in the manner provided by law for mak-
28 ing appropriations by the said city. The said commission
29 may, with the approval of the city council of Lynn, agree
30 with any person or corporation sustaining damages to his

31 or its property by such taking as to the amount of such
32 damages to be paid and the city of Lynn shall pay the
33 same; but if they are unable to agree the damages shall,
34 on petition of the person or corporation whose land is
35 taken or that of the city of Lynn, filed in the superior
36 court within two years after the date recorded as above
37 provided, be determined by a jury in the manner provided
38 for determining damages sustained in the taking of land
39 and laying out highways. The said city may, for the
40 purpose of carrying said improvement into effect, dredge
41 channels and basins and may also erect, control and
42 manage such wharves, docks and piers provided for in
43 said plan of improvement as may be necessary for pro-
44 moting and carrying on the commerce of the port of
45 Lynn. All of the powers given in this act to fill solid
46 the whole or any portion of the land taken or the flats of
47 the commonwealth permitted by the provisions of this
48 act to be used, to dredge channels or basins, or to con-
49 struct docks, wharves or piers, shall be reposed in and
50 exercised by said commission, which shall have power
51 and authority to employ all necessary labor, make, execute
52 and carry out all necessary contracts, and generally to do
53 and execute all construction work of any kind herein
54 authorized to be done by the said city of Lynn. The
55 administration, however, of the land taken or reclaimed
56 and of all structures erected or maintained under the pro-
57 visions of this act, and the power to sell land taken for
58 the purpose of abating said nuisance or created by means
59 of filling solid as hereinbefore authorized, shall be and
60 remain in the city council of Lynn, subject to the laws
61 governing the ownership, sale and administration of land
62 owned in fee by said city: *provided, however,* that the
63 said commission shall have power to agree with any con-
64 tractor undertaking to do the whole or any portion of

65 the construction or engineering work herein authorized,
66 or with any person or corporation having a right of action
67 for an interest of land taken under the provisions of this
68 act, that the payment for said work or for said interests
69 shall be made in land taken or reclaimed by said city
70 under the provisions of this act, at rates to be determined
71 by said commission, subject to the approval of the said
72 council. No expenditures shall be incurred or contracted
73 for by either of the commissions created under this act,
74 for the purposes of the above authorized investigation, or
75 for the taking or purchase of land or any interest therein,
76 or for construction work of any kind, until the city coun-
77 cil of said Lynn shall have made an appropriation there-
78 for in the manner provided by law for making appropria-
79 tions in said city. Such expenditures shall not exceed
80 the appropriations made therefor and all contracts in-
81 volving an expenditure in excess of such appropriation
82 shall be void.

1 SECTION 5. The power to lay out and construct streets
2 and ways and sewers in and over any portion of the land
3 acquired, created or reclaimed under the provisions of
4 this act shall be and remain in the city council of Lynn.
5 If the said city shall, acting under the provisions of this
6 act or under the provisions of chapter two hundred and
7 thirty-four of the acts of the year nineteen hundred and
8 eight, lay out and extend Market street to the Nahant
9 line, the metropolitan park commission may, if it deems
10 the same desirable, continue such laying out and exten-
11 sion to the traffic road, so-called, in the town of Nahant,
12 and may fill solid the flats lying between the inner
13 boundary of said extension of Market street continued
14 and the uplands within the metropolitan reservation in
15 the town of Nahant: *provided, however*, that none of the

16 work hereinbefore authorized shall be undertaken by
17 the said commission on behalf of the city of Lynn and
18 no appropriation therefor shall be made by the city coun-
19 cil until the plans under which said work is to be per-
20 formed shall have been approved by the board of harbor
21 and land commissioners of the commonwealth of Massa-
22 chusetts.

1 SECTION 6. Chapter three hundred and thirteen of
2 the acts of the year eighteen hundred and sixty-seven,
3 establishing the harbor line of the city of Lynn, is hereby
4 repealed.

1 SECTION 7. Subject to the provisions of the foregoing
2 sections, the city of Lynn, acting through said commis-
3 sion, may build a bulkhead of wood or such other ma-
4 terial as may be determined upon on such line as may
5 be designated in the plan accepted by the city of Lynn:
6 *provided*, said line does not lie southerly of the line of
7 bulkhead shown on the plan prepared by and on file in
8 the office of the harbor and land commissioners, marked
9 "Plan of Lynn Harbor prepared by Harbor and Land
10 Commissioners January 1910" and may fill the flats
11 behind said bulkhead to an elevation of sixteen feet or to
12 such other elevation as may be determined by the city
13 of Lynn and approved by said harbor and land commis-
14 sioners. The work contemplated under the provisions
15 of this act shall all be done with the approval of the board
16 of harbor and land commissioners, as provided in chapter
17 ninety-six of the Revised Laws, except as herein other-
18 wise provided. When said commission shall have con-
19 structed said bulkhead, and shall have filled all or a
20 substantial part of the flats northerly thereof, the title
21 of the commonwealth to the flats so filled and rights

22 therein shall pass to the city of Lynn without any com-
23 pensation for the same or for the displacement of tide
24 water, under the provisions of chapter ninety-six of the
25 Revised Laws: *provided, however,* that unless the con-
26 struction work authorized in this section is commenced
27 and a substantial amount thereof completed within six
28 years from the date of the passage of this act, the pro-
29 visions of this section shall be null and void.

1 SECTION 8. The title to all the piers, wharves, docks
2 and berths on the harbor or sea side of said bulkhead
3 when constructed, together with an area of filled land
4 eighty feet wide behind or northerly of said bulkhead
5 and substantially parallel therewith, shall always be and
6 remain the property of the city of Lynn, without any
7 power to convey or alienate the same otherwise than by
8 lease for a term not exceeding fifteen years: *provided,*
9 *however,* that if the lessee be a person or corporation
10 whose flats have been taken or purchased under the pro-
11 visions of this act, or whose access to the water front
12 from property now bordering on the harbor is destroyed
13 by said filling solid the flats said lease may be for such
14 term not exceeding ninety-nine years as the city council
15 may determine upon.

1 SECTION 9. This act shall take effect upon its passage,
2 except so much thereof as is made dependent on the
3 acceptance of the voters of the city of Lynn, and such part
4 shall take effect as hereinbefore provided.

