

HOUSE No. 1366

Bill accompanying the petition of Edward E. Elder for legislation to authorize the Boston Elevated Railway Company to construct an elevated railway from Sullivan square in the city of Boston through the city of Somerville to the city of Medford. Street Railways. February 26.

Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Nine.

AN ACT

To authorize the Boston Elevated Railway Company to construct an Elevated Railway from Sullivan Square in the City of Boston through the City of Somerville to the City of Medford.

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 Boston Elevated Railway Company,
2 hereinafter called the company, which term shall be
3 deemed to include its successors and assigns, may con-
4 struct lines of elevated railway, according to such plans
5 or system as the board of railroad commissioners, here-
6 inafter called the board, may approve, to be operated by
7 electricity or other motive power except steam, upon
8 the following location, and may equip, maintain and

9 operate engines, motors, trains and cars thereon, to
10 wit:—Beginning at a point in Main street, or in or
11 near private land of the company near Sullivan square
12 terminal station, in that part of Boston which was for-
13 merly Charlestown; thence northwesterly, through or
14 across Main street and Mystic avenue, or either, or in
15 whole or in part through or across public or private
16 ways or lands near Mystic avenue, and within fifteen
17 hundred feet thereof, to the railroad location owned
18 in whole or in part by the Boston and Maine Railroad
19 thence across said railroad location and through or across
20 public or private lands or ways on Mystic avenue, or
21 within two hundred feet thereof, to the Medford line,
22 excepting however from the location hereby granted the
23 entire area of Broadway park in Somerville; thence
24 continuing in the same general direction alongside of
25 Mystic avenue, through or across public or private land,
26 and across public or private ways between the Mystic
27 river reservation and Mystic avenue, to a point within
28 two thousand feet of Medford square, crossing, when
29 necessary, lands covered by the waters of the Mystic
30 river.

31 The terminal to be situated within a tract of land
32 bounded and described as follows:—Northerly by a
33 curved line of fourteen hundred feet radius, the center
34 point of said radius to be in the center of Medford
35 square. Easterly by the Mystic river, southerly by a
36 curved line of twenty-two hundred feet radius, the cen-
37 ter point of said radius to be the same as that used for
38 the northerly boundary and westerly by the northeasterly
39 line of Mystic avenue.

1 SECTION 2. Upon private lands in the city of Medford
2 said elevated railway may be constructed so far as the

3 company may deem necessary or desirable, near or upon
4 the surface of the ground, with the approval of the board:
5 *provided, however,* that no public street shall be crossed
6 at grade. In the city of Somerville the structure shall be
7 a full elevated structure.

1 SECTION 3. The company may construct said ter-
2 minals, branches, spurs, sidings, turnouts, connections,
3 deflections, switches, extensions and other structures, and
4 such loop lines, in connection with and within the location
5 herein granted, through or across such streets or ways,
6 or public or private lands, as may be necessary or con-
7 venient to turn its trains, or to reverse the direction
8 thereof, or to make connections with surface car lines,
9 or for other purposes authorized by this act or by its
10 charter, and may make such convenient changes, exten-
11 sions and relocations of surface lines owned or controlled
12 by the company, over public or private ways or lands,
13 as may be approved by the board; all of which, with the
14 stations, are hereinafter called appurtenances. Nothing
15 herein contained, however, shall be deemed to authorize
16 the company to construct or maintain an elevated struc-
17 ture or to operate elevated trains in the cities of Somer-
18 ville and Medford outside of the location granted in
19 section one of this act.

1 SECTION 4. The company may locate and construct
2 stations at convenient points, with suitable exits and
3 approaches to and from the streets and stations, but the
4 same, excepting platforms and approaches thereto from
5 buildings, shall not be located in any public way or
6 place, unless such location is approved by the mayor and
7 aldermen or by the board. Before constructing its rail-
8 road upon any route granted to it, and before constructing
9 any station in any public way or place, the company

10 shall prepare and file with the mayor of the city in which
11 the route or station is located plans showing the form
12 and method of construction proposed, for his examination
13 and approval as to architectural appearance, elevation
14 and obstruction of light and air, and he shall approve or
15 disapprove the same in writing, and if the same are
16 disapproved by him the company may appeal to the
17 board, who shall determine the question. At least one
18 station shall be located and constructed in the city of
19 Somerville.

1 SECTION 5. The company may lease, purchase or take
2 by right of eminent domain the fee in public or private
3 lands, except that it shall not take by eminent domain
4 lands of the commonwealth or of the Boston and Maine
5 Railroad, for the purpose of constructing its railway or
6 terminals, buildings, shops, stations, engine and car
7 houses, and connections with surface railways, and for
8 any purpose necessary for the construction or convenient
9 use by the company, or for the convenient use by the
10 public of its said railway, or for any purpose authorized
11 by this act or by the charter of the company. To make
12 any taking by right of eminent domain, the company
13 shall cause to be recorded in the registry of deeds for the
14 county in which the land is situated a description of the
15 land taken, as certain as is required in a common con-
16 veyance of land, with a statement that the same is taken
17 under authority of this act, signed by a majority of its
18 directors, and the land so described shall, upon such re-
19 cording, be taken. The company shall at the same time
20 give notice of such taking to the owner of the land taken,
21 if known, but want of such notice shall not affect the
22 validity of the taking, nor extend the time for proceed-
23 ings for damages.

1 SECTION 6. The company shall pay all damages occa-
2 sioned by the taking of such land, and may agree with
3 the owner of the land upon the amount thereof, and if the
4 parties do not agree, the damages may be determined by
5 a jury in the superior court for the county in which the
6 land is situated, on petition of the owner or of the com-
7 pany, filed in the clerk's office before the expiration of
8 two years after the recording of the taking, and judgment
9 shall be entered upon the verdict of such jury, and costs
10 shall be taxed and execution issued in favor of the pre-
11 vailing party as in other civil cases. The provisions of
12 sections seventeen to twenty-five, inclusive, and of section
13 one hundred and fourteen of chapter forty-eight of the
14 Revised Laws relating to procedure in case of damage
15 to estates in which several parties have different or several
16 interests shall apply to proceedings in such cases under
17 this act.

1 SECTION 7. The company shall indemnify the cities
2 of Boston, Somerville and Medford against all liability
3 for damage arising out of the work herein provided for
4 upon notice of any claim therefor and opportunity to
5 defend against the same.

1 SECTION 8. The owners, lessees, mortgagees and other
2 persons having an estate in any land or premises abutting
3 on any land, or abutting on any rights of way over private
4 land, acquired by the company under the provisions of
5 this act upon which an elevated structure is erected, shall
6 be entitled to reasonable compensation for damage sus-
7 tained by reason of the maintenance and operation of
8 said railway, and any such person may, at any time
9 within three years after the construction of said railway,
10 file in the office of the clerk of the superior court for the

11 county where his said premises lie, a petition setting
12 forth his claim against the company. He shall give the
13 company fourteen days' notice of the filing of such peti-
14 tion, and an answer thereto shall be filed by the company
15 within thirty days after the return day of such notice.
16 The trial of any such petition shall be held before a
17 jury, if either party claims such right at the time of
18 filing the petition or within ten days after the filing of
19 the answer thereto, otherwise the case shall be heard be-
20 fore a court without a jury. If a verdict or decision
21 shall be rendered for the petitioner, interest shall be in-
22 cluded from the day of the filing of the petition. The
23 company shall be liable to the duties and liabilities de-
24 scribed in section twelve of chapter five hundred and
25 forty-eight of the acts of the year eighteen hundred and
26 ninety-four relative to satisfaction of judgment pursuant
27 to findings under the provisions hereinbefore set forth.
28 The provisions of this section shall be deemed in addition
29 to and not as a substitute for the provisions of section
30 eight of chapter five hundred and forty eight of the acts
31 of eighteen hundred and ninety-four, which are herein-
32 after incorporated in this act.

1 SECTION 9. Wherever the route upon which the com-
2 pany is authorized to construct and operate its elevated
3 railway crosses the location or tracks of any railroad
4 company, or the land of the commonwealth, or tide or
5 other water, the crossing shall be made in such manner,
6 and the method of construction shall be such as may be
7 agreed upon between the directors of such railroad com-
8 pany or the public board or officers having general control
9 of such land or waters and the directors of the company,
10 and if the parties are unable to agree as to the manner
11 of crossing or method of construction at such point, the

12 same shall be determined by the board upon application
13 of either party; and in case any railroad company sus-
14 tains any damage by reason of such crossing, the same
15 shall be estimated and recovered in the manner provided
16 in section eight of this act.

1 SECTION 10. If the city of Somerville or the city of
2 Medford shall desire hereafter to construct a highway
3 across the route or lands of the company taken under
4 this act, it may take without compensation the necessary
5 easement for the purpose, but no highway shall be con-
6 structed to cross the company's tracks at grade, and be-
7 fore constructing any highway under this section, the city
8 shall obtain the approval of the board to a plan of con-
9 struction to be filed with the board, with such details
10 as the board may require, and this plan shall be altered
11 before approval, if the board so order. The work of
12 construction shall be done under the direction of the
13 board. The supreme judicial court shall have jurisdic-
14 tion in equity to enforce compliance with all such orders
15 of the board.

1 SECTION 11. The company may, on or before the
2 thirty-first day of December in the year nineteen hun-
3 dred and nine, apply to the board of aldermen of the
4 cities of Boston, Somerville and Medford for an elevated
5 railway route over the location herein granted, or in and
6 over such other intervening public or private ways or lands
7 as the mayor and aldermen may approve. If the route
8 so applied for is not approved by the mayor and aldermen
9 within sixty days after the application therefor, the com-
10 pany shall, within thirty days after the expiration of
11 said sixty days, apply to the board for such approval, and
12 thereupon the board having in view all public interests

13 shall, after public notice and hearing, finally fix and de-
14 termine a route. The company shall begin construction
15 of its elevated railway over such route within six months
16 and shall complete the same within two and one-half
17 years after it is authorized to begin construction thereof.

1 SECTION 12. In the construction, maintenance and
2 operation of the elevated railway and appurtenances pro-
3 vided for by this act, the company shall have the rights,
4 powers and privileges, and be subject to the duties,
5 restrictions and liabilities prescribed in respect to its
6 elevated lines and structures by sections eight, nine,
7 twelve, fifteen and eighteen of said chapter five hundred
8 and forty-eight of the acts of the year eighteen hundred
9 and ninety-four and by sections one, six, eight, ten,
10 sixteen and twenty-one of chapter five hundred of the
11 acts of the year eighteen hundred and ninety-seven, and
12 such railway and appurtenances when constructed and
13 its location shall be held by the company by and upon the
14 tenure prescribed in the first clause of section nineteen
15 of said chapter five hundred ending with the words
16 "public statutes", and with the same rights, privileges
17 and immunities therein as are provided in either of said
18 acts in respect to its elevated lines or structures.

1 SECTION 13. The company may from time to time
2 in the manner and subject to the requirements pre-
3 scribed by law, issue and dispose of such amounts of
4 its capital stock or bonds, or of either at its option,
5 in addition to amounts heretofore authorized, as
6 may be necessary to meet and pay the cost of construc-
7 tion, connection and equipment for use and operation of
8 the railway which it is authorized by this act to construct,
9 and its appurtenances and the cost of acquisition of any

10 lands, and all other expenditures made or incurred by
11 the company under authority of this act.

1 SECTION 14. This act shall take effect upon its ac-
2 ceptance by the board of aldermen, approved by the mayor
3 of the cities of Somerville and Medford, respectively,
4 within one month; and by the company by vote of its
5 board of directors and return thereof, filed in the office
6 of the secretary of the commonwealth within two months
7 after its passage. If the construction of said railway is
8 delayed by litigation, unforeseen casualty or other cause,
9 the company may apply to the board for extension of the
10 time therefor, and the board, upon notice to the cities
11 of Somerville and Medford, and upon hearing and proof
12 that such litigation is not collusive or that such casualty
13 or other cause was not due to the fault of the company,
14 may determine what extension of the time may reason-
15 ably be allowed for the completion of the railway and
16 such further time shall thereupon be allowed therefor.

1 SECTION 15. If the company shall fail to apply for
2 a route on or before the thirty-first day of December in
3 the year nineteen hundred and nine, all rights herein
4 granted to the company shall cease.

