

SENATE....No. 73.

[Proposed as a substitute for Report inexpedient to legislate.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty.

AN ACT

For establishing a Water Bench and determining the height of Dams in the several Towns of the Commonwealth.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

- 1 SECT. 1. The county commissioners of the several
- 2 counties in the Commonwealth are hereby constituted
- 3 a board of commissioners for their respective counties,
- 4 for the purpose of establishing a water bench in each

5 town within their county, and determining what is
6 the present height of all the dams that now exist or
7 that shall hereafter be erected for the purpose of creat-
8 ing water-power within their respective counties.

1 SECT. 2. It shall be the duty of the county com-
2 missioners of each county in the Commonwealth,
3 within one year from the passage of this act, to estab-
4 lish a water bench in every town within their respec-
5 tive counties, and make an accurate survey, and take
6 the level from said bench to the top of each dam then
7 extant, for the purpose of creating water-power within
8 said town, and also to measure the length of each
9 dam on the top thereof, and also the length of the
10 water roll of the same.

1 SECT. 3. It shall be the duty of the commissioners
2 to make an accurate survey bill in feet and inch, of
3 the height or depression from the water bench of each
4 dam, together with the length of the top thereof, and
5 also the water roll thereof, and cause the same to be
6 filed in the register's books of record in the county
7 where such survey is made, within ten days from the
8 time of perfecting such survey.

1 SECT. 4. It shall be the duty of all persons here-
2 after contemplating the erection of a dam or dams for
3 the purpose of creating water-power in any town in
4 the Commonwealth, to give notice to the commis-
5 sioners in writing, of such intention, and designate
6 therein the place where such dam is to be erected,
7 and upon the receipt of such notice the commissioners
8 shall cause to be given at least fifteen days' notice to

9 all parties interested in the erection of said dam in
10 the public journals of the county, and by posting
11 notices of the same in three or more conspicuous
12 places in the town where such dam is proposed to be
13 built, designating the place where the dam is proposed
14 to be built, and the time when the commissioners will
15 meet for the purpose of establishing the proposed
16 dam.

1 SECT. 5. In accordance with the provisions of this
2 bill, it shall be the duty of the commissioners to pro-
3 ceed to make the survey, and take the level, and
4 determine what shall or may be the height of the
5 desired dam, with the length of the top, and also the
6 water roll thereof, in all cases fixing the same with
7 reference to the rights of other parties, (after giving
8 them an opportunity to be heard,) so that no existing
9 rights shall be illegally infringed upon, and the com-
10 missioners shall cause the record thereof to be made
11 as provided in the third section of this bill.

1 SECT. 6. Each individual or company having his
2 or their dam surveyed as provided in this bill, shall
3 pay to the commissioners the costs of such survey,
4 and the expenses of the survey bill and the recording
5 thereof: *provided*, that no commissioner shall charge
6 more than three dollars per day for actual service.

1 SECT. 7. In all cases where the commissioners
2 make a survey for a new dam, the record thereof shall
3 be conclusive of the right of the party or parties to
4 erect the same agreeably thereto, and shall be a bar
5 to all persons claiming damages therefor, except such
6 damages as the commissioners shall have awarded.

1 SECT. 8. Parties having unadjusted claims for
2 damages arising from existing water-powers, may, by
3 concurrent action, refer the same to the commissioners,
4 and it shall be the duty of the commissioners to hear
5 the parties in the case, and decide thereon, and their
6 decision shall be final, unless a jury shall be asked by
7 one or more of the parties, in which case the parties
8 shall be heard before them in the same manner and
9 form as now provided by law for the settlement of
10 land damages accruing by the laying out of highways,
11 and the decision of the jury shall be final.