

# HOUSE . . . . . No. 57.

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## Commonwealth of Massachusetts.

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EXECUTIVE DEPARTMENT, BOSTON, Feb. 9, 1887.

*To the Honorable Senate and House of Representatives.*

In my inaugural message I referred briefly to the fact that an agreement had then been recently made for the consolidation of the property and franchise known as the Troy and Greenfield Railroad and Hoosac Tunnel, with the connecting line owned by and in possession of the Fitchburg Railroad Company, in accordance with the provisions contained in chapter 297 of the Acts of the General Court for the year 1885. This agreement was executed by the Governor and Council in behalf of the Commonwealth, and by the President and Directors of the Fitchburg Railroad Company in behalf of that corporation, on the fifth day of January, and has since been ratified by the stockholders of that company. The arrangement thus consummated is a long step towards the complete execution and development of the plan upon which and for which the Troy and Greenfield Railroad was incorporated, and to aid which the Commonwealth has contributed so largely the capital required.

The history of the State's connection with the construction of the road and Tunnel is well known. In 1876, at the opening of the Tunnel for general business, the State

found itself in possession, as mortgagee for purposes of foreclosure, of a line of railroad forty-four miles in length, of which four and three-quarter miles was a tunnel. For the construction of this property it had advanced substantially the entire cost, and its title was subject to a right of redemption at any time within ten years by the original stockholders in the railroad company, upon terms which were not accurately defined. Considered as a railroad property, the line had but little local business, and its most important use and nearly all its financial value, present or prospective, was as a connecting link between the railroad systems to the east and those to the west of it.

By chapter 77 of the Acts of 1875 the Legislature decided to allow the use of the road by all railroad companies whose roads connected with it, directly or over intervening railroads, under the direction of a manager, upon the payment of equal tolls, to be fixed by the Governor and Council from time to time. This arrangement continued with little change of its essential features till 1880, with but little satisfaction to the State or the railroads concerned.

By chapter 261 of the Acts of the year 1880 a change was made by which contracts lasting for seven years were authorized to be made for the operation of the State's road by connecting roads. Under this act contracts were made with the Fitchburg Railroad Company and the New Haven and Northampton Railroad Company for operating that portion of the road east of North Adams, and with the Troy and Boston Railroad Company, and Boston, Hoosac Tunnel and Western Railroad Company, for operating that portion west of North Adams. By the terms of these contracts the Commonwealth bore the expense of maintenance of way and station service; the operating roads bore the transportation expenses, and retained from freight money and fares collected the cost, based on the provisions of the contract, paying over to the Commonwealth what remained for its share.

According to this statement, which has been carefully prepared, the results to the Commonwealth from the operation of the road under these contracts, as finally adjusted, have been as follows for the several railroad years: —

	Receipts.	Payments.	Income.
1881, . . . .	\$200,390 78	\$183,296 41	\$17,094 67
1882, . . . .	197,803 70	171,064 18	26,839 52
1883, . . . .	293,413 93	168,514 68	124,899 25
1884, . . . .	291,687 22	219,026 12	72,641 10
1885, . . . .	313,964 27	261,756 96	52,207 31
1886, . . . .	383,765 56	270,417 60	113,347 96

All the above income, except that for 1886 and a large amount in addition, has been expended in double tracking the road and in other permanent improvements. Probably more than the whole of the net earnings of 1886 has been absorbed by the expenses of the accident near Bardwell's Ferry.

The amount expended in double tracking, beginning in 1879, is . . . . .		\$991,133 00
From Troy & Greenfield R. R. fund, . . . . .	\$85,000 00	
From earnings of road, . . . . .	125,581 00	
From treasury of the Commonwealth, . . . . .	780,552 00	
	<hr/>	\$991,133 00

At the session of the General Court for 1884 (by Resolve, chapter 67) the Governor and Council were requested to consider the relations of the Commonwealth to the Troy and Greenfield Railroad and Hoosac Tunnel, and report to the next session of the Legislature such recommendations and suggestions as they might deem expedient respecting its future management or disposition. The subject was taken into careful consideration, and the conclusions of the Governor and Council were communicated to the General Court at the session of 1885 by my predecessor, Governor Robinson, in a special message, February 3, in which the respective advantages of a sale and of a consolidation were clearly stated.

During this session, chapter 297 was enacted and duly approved by the Governor, June 5, providing for a consolidation of the Commonwealth's property with that of either a new corporation, which might be formed within three months, or an existing corporation or corporations, which should form with the State road a continuous line of railroad from the seashore to the boundary of the State in Williamstown.

At the expiration of the time fixed by the act no corporation had been formed. The Governor and Council went

on to investigate the subject matter and inform themselves fully as to capacity and condition of the various lines between the State road and the seashore on the east, and between the road and sufficient outlets on the west. A special examination was made of the Fitchburg line, as well as of the Central Massachusetts and its possible connections. These examinations were not completed until near the time of assembling of the General Court for 1886. For obvious reasons of propriety the matter stood without further action during the session of 1886. No further legislation was deemed necessary by the General Court, and during the fall a proposition for consolidation was received by the Governor and Council from the Fitchburg Railroad Company. The matter was referred to a committee of the Council for examination and recommendation.

The representatives of the Lowell, or Central Massachusetts line, were also advised that propositions from them would be received and entertained by the Governor and Council. Instead of making a bid, they asked the Governor and Council to name a minimum price for the State's interest. They were informed that the Governor and Council would not accept less than \$5,000,000 cash value. The Lowell Company replied, "that under these circumstances the Tunnel and Troy and Greenfield Railroad were greater luxuries than they could afford to indulge in at present." Negotiations with the Fitchburg Company terminated in an agreement which, on the fourth of January, was reduced to writing, and on the fifth was executed in the form hereto annexed.

Under the provisions of the act it was considered that the negotiations should be conducted with a view to a consolidation of property and union of interests, rather than a sale; and they were so conducted, and the agreement completed from this point of view.

I believe that this consolidation is just and fair to both parties. The Commonwealth receives at once that to which it is fairly entitled from the legitimate earnings of the property under able management. The Commonwealth's share in the present earnings has been secured by a rate of interest on the bonds which has been so fixed as not to overburden the line by an excessive amount of fixed charges, thus avoid-

ing all necessity for unduly overcharging patrons of the line, upon whom largely any undue burden must inevitably fall.

The Commonwealth's holding of common stock secures a larger interest in the anticipated future increase of value in the consolidated line than the present earning capacity would warrant. It constitutes, however, a fair allowance for the great cost of the Tunnel and its value as a connecting link in the system. This stock shares equally with the preferred all earnings above the fixed dividend on the preferred stock, and it is believed that this arrangement secures a union of interest between the two classes of stock which will be valuable in the future management of the property.

No provision was made in the act of the Legislature to secure a representation of the State's interest in the management of the road. Both parties to the agreement concurred in the view that there should be such direct representation, and the representatives of the railroad company undertook by a supplementary agreement to apply for the necessary legislative authority. I recommend this matter to your prompt attention for such action as you find the public interests require.

An incidental, but important, result of the consolidation is, that under the provisions of the act the sinking funds of the Commonwealth have been so far increased as to make it certain that they will be sufficient in the aggregate, with their ordinary accumulations, for the payment of the entire debt of the State at maturity. As the debt falls due and is paid from year to year, commencing in 1888, a considerable and welcome relief will be furnished the tax-payers in the steady reduction and final disappearance of the item "Interest on Debt" in the annual estimate of the necessary expenditure of the Commonwealth.

As a consequence of the action taken, it seems clear to me that the principal and leading purpose for which the Commonwealth entered into this undertaking, viz., the establishment of a strong through line of railroad from the seashore to the Hudson, is now assured.

OLIVER AMES.

WHEREAS by chapter 297 of the Acts of the year 1885, entitled "An Act to promote the consolidation of the Troy and Greenfield Railroad and certain other railroads," it is provided that the Governor and Council may agree upon a union or consolidation of the railroad, property, equipment and franchise to use the same as a railroad, known as the Troy and Greenfield Railroad and Hoosac Tunnel, with all the easements and appurtenances therewith connected with any railroad corporation which is in lawful possession and control of a continuous line of railroad from an eastern terminus in Boston, Somerville or Cambridge to a connection with the Troy and Greenfield Railroad, and whereas the Fitchburg Railroad Company is in lawful possession and control of such a continuous line of railroad, and it seems desirable to the Governor and Council and to the President and Directors of said Fitchburg Railroad Company that the said Fitchburg Railroad Company and the said Troy and Greenfield Railroad and Hoosac Tunnel should be consolidated and form one corporation,

NOW, THEREFORE, the Governor and Council, in behalf of the Commonwealth of Massachusetts, and the said Fitchburg Railroad Company, by its President and Directors, have agreed upon a union and consolidation of said respective properties in the manner hereinafter set forth and upon the following terms and conditions, the same to be and become valid and binding when ratified by a vote of a majority in interest of the stockholders of said Fitchburg Railroad Company present and voting at a meeting duly called for that purpose, to be held on or before the first day of February, 1887.

## ARTICLES OF CONSOLIDATION.

### ARTICLE I.

On and after the first day of February, A.D. 1887, the Fitchburg Railroad Company and the railroad property, equipment and franchise to use the same as a railroad known as the Troy and Greenfield Railroad and Hoosac Tunnel, with all the easements and appurtenances therewith connected (except the Southern Vermont Railroad), shall become united and consolidated, and shall be and remain one corporation to be called the Fitchburg Railroad Company, subject to all the provisions of said chapter 297, and especially to the provisions of section 8 of said chapter.

## ARTICLE II.

Said consolidated corporation, on and after said date, shall have and enjoy all the franchises, powers, privileges, property and rights of every kind belonging to the Fitchburg Railroad Company now existing, and to the Troy and Greenfield Railroad and Hoosac Tunnel, and to the Commonwealth in its capacity as owner of the same, or to either of them, and shall assume all the duties, debts and liabilities of the said existing Fitchburg Railroad Company, and of the manager of the said Troy and Greenfield Railroad and Hoosac Tunnel, as he is made liable in his official capacity by virtue of the existing statutes of the Commonwealth, except as is hereinafter provided.

## ARTICLE III.

The capital stock of said consolidated corporation shall, until the amount thereof shall be changed according to law, consist of twelve millions forty-eight thousand eight hundred dollars (\$12,048,800), divided into shares of one hundred dollars (\$100) each, to be issued as herein below set forth. Of this amount of capital stock, seventy thousand four hundred and eighty-eight (70,488) shares shall be preferred stock, and fifty thousand (50,000) shares shall be common stock.

On and after said first day of February each and every share of the capital stock of the present Fitchburg Railroad Company shall at once be and become a share of the preferred capital stock of the consolidated company; and within four months after said first day of February there shall be issued to the Commonwealth of Massachusetts as and for its property fifty thousand (50,000) shares of common stock in the consolidated company, and to the Fitchburg Railroad Company seventeen thousand six hundred and twenty-two shares (17,622) of preferred stock, the same to be divided *pro rata* among the shareholders of the Fitchburg Railroad Company of record on the thirty-first day of January current.

## ARTICLE IV.

The preferred stock, in preference to and priority over the common stock, shall be entitled to such semi-annual dividends as can be paid out of the profits of the corporation, not to exceed, however, four per cent. per annum, free of tax.

After the payment of the above dividend upon the preferred stock to the amount of four per cent. per annum in any one year, any balance of annual earnings which may be divided shall be

applied to the payment of dividends upon the preferred and common stock, each share of preferred and common stock sharing equally in the additional dividends so declared and paid.

#### ARTICLE V.

The common stock shall have no voting power until it shall have received dividends for two consecutive years amounting to not less than four per cent. per annum, excepting that it shall have the right to vote on an equality with the preferred stock upon any question of issuing more preferred or common stock, and also upon any question of leasing any part of the consolidated road, or of hiring or uniting with any other road.

#### ARTICLE VI.

As soon as is practicable, said consolidated corporation shall issue, and the Commonwealth shall receive, bonds of the said consolidated company to the amount of five millions of dollars (\$5,000,000), reckoned at the par value thereof, dated February first, eighteen hundred and eighty-seven, payable at the expiration of fifty years from the date thereof, with interest payable semi-annually, for the first five years at the rate of three per cent. per annum, for the second five years at the rate of three and one-half per cent. per annum, and for the remaining forty years at the rate of four per cent. per annum, which shall be secured by the mortgage hereinafter provided. On or before the first day of May, 1887, said consolidated company shall also execute a mortgage of its entire road, property and franchises, then or thereafter to be acquired, which said mortgage shall be made to three Trustees, to be approved by the Governor and Council, of whom two, at least, shall be at all times residents of this Commonwealth.

Such mortgage shall be made expressly subject to the encumbrance of any legally authorized mortgage, already existing, of any part of the property of such corporation; and there shall be issued to the Trustees aforesaid from time to time bonds of an amount equal to the bonds and mortgage notes outstanding, which are a lien upon any such property or franchises, said bonds to be reserved in the keeping of said Trustees until the discharge of such lien, or turned over to the holders in discharge thereof.

There shall also be issued to said Trustees, from time to time, bonds to an amount equal to the amount of the outstanding unsecured debts of the present Fitchburg Railroad Company, and of any road which shall hereafter become consolidated with the cor-

poration hereby created under the provisions of said Act, said bonds to be reserved in the keeping of said Trustees for the security of the holders of such debts until their discharge, or to be turned over to such holders in discharge thereof.

Said mortgage shall contain suitable provisions to secure such reservation and disposition of such bonds, and shall be in form satisfactory to and approved by the Attorney-General of the Commonwealth.

Said mortgage may be made to secure any and all bonds hereafter issued: *provided, however*, that the whole amount of bonds issued shall at no time exceed the amount of the capital stock actually issued according to law.

#### ARTICLE VII.

The By-laws of the present Fitchburg Railroad Company, except so far as the same may be inconsistent with this agreement or with the laws of the Commonwealth, shall constitute the By-laws of the consolidated corporation until legally changed; and the Directors, officers and agents of the present Fitchburg Railroad Company shall constitute the officers and agents of the consolidated corporation until others are duly chosen in their place.

#### ARTICLE VIII.

This agreement is made subject to the rights of other connecting railroads under existing leases, and no existing lease or contract made by or in behalf of the Commonwealth, concerning the use of said Troy and Greenfield Railroad and Hoosac Tunnel, or any part of the same, shall be affected by this agreement, but the rentals and income therefrom shall from and after said first day of February enure to the benefit of said consolidated corporation.

#### ARTICLE IX.

The Directors of the Fitchburg Railroad Company shall have the right before said first day of February to declare a dividend not exceeding two per cent., which dividend shall be paid by the consolidated company to the holders of stock in the Fitchburg Railroad Company of record on the thirty-first day of January, eighteen hundred and eighty-seven, and the Commonwealth shall have the right to retain all the earnings of the Troy and Greenfield Railroad and Hoosac Tunnel up to said first day of February.

The usual audit and settlement before the railroad commissioners, of the accounts between the existing Fitchburg Railroad Com-

pany and the Commonwealth under their existing contract for the operation of the Troy and Greenfield Railroad, shall be made according to the terms of said contract up to the first day of February, eighteen hundred and eighty-seven: *provided, however*, that no claim shall be made by the Fitchburg Railroad Company for or by reason of any sums of money which it has paid or may pay for any personal injury or damage incurred in the accident at or near Bardwell's Ferry in April last.

All legal debts, dues and liabilities of the Commonwealth in its capacity as owner of the Troy and Greenfield Railroad and Hoosac Tunnel, and of the Manager of said railroad and tunnel, in his official capacity, incurred or accruing before said first day of February, eighteen hundred and eighty-seven, arising out of contracts made by the Commonwealth or said Manager in such capacity (except such as may arise out of a certain contract for ties with John L. Roper), shall be discharged and paid by the Commonwealth; not including therein any claim for personal injuries or for loss or injury to merchandise or other property, except such as shall properly be included in said audit and settlement, and all such claims for personal injury or for loss or injury to merchandise or other property, except such as are included in said audit and settlement, and all other claims in the nature of tort against the Commonwealth as owner of said railroad and tunnel or against the Manager thereof in his official capacity, shall be assumed and discharged by said consolidated corporation, including all claims for personal injury by said accident at or near Bardwell's Ferry. Said consolidated corporation shall have the benefit of and assume the burden and obligation of said contract with said Roper.

#### ARTICLE X.

It is hereby agreed that all instruments for further assurance which are or may become necessary for perfecting the title intended to be conveyed by the Commonwealth, or for fulfilling the obligations of either party hereto under this agreement, shall be executed upon reasonable request.

#### ARTICLE XI.

On and after said first day of February, said consolidated corporation shall have exclusive management and control of the Troy and Greenfield Railroad and Hoosac Tunnel, and all the easements and appurtenances therewith connected (except the Southern Vermont Railroad), subject to the terms and conditions of this agreement.

IN TESTIMONY WHEREOF, the Governor and Council of the Commonwealth of Massachusetts and the President and Directors of the Fitchburg Railroad Company have executed these presents this fifth day of January, A.D. eighteen hundred and eighty-seven.

GEO. D. ROBINSON, *Governor.*

OLIVER AMES, *Lieut.-Governor.*

JONATHAN BOURNE,

JOHN HASKELL BUTLER,

HENRY C. GREELEY,

ABRAHAM B. COFFIN,

WARREN E. LOCKE,

FRANK D. ALLEN,

LAWRENCE J. LOGAN,

LEWIS J. POWERS,

*Executive Council.*

THE FITCHBURG RAILROAD COMPANY,

By E. B. PHILLIPS,

*President and Director.*

ROBERT CODMAN,

RODNEY WALLACE,

C. T. CROCKER,

FRANKLIN N. POOR,

CHARLES A. WELCH,

*Directors.*

With the exception of Mr. Seth Bemis, who by reason of sickness is unable to attend to business, the above constitutes the entire Board of Directors of the Fitchburg Railroad Company.

COMMONWEALTH OF MASSACHUSETTS,  
SECRETARY'S DEPARTMENT, BOSTON, Jan. 5, 1887.

By the Governor and Council.

Witness the seal of the Commonwealth.

HENRY B. PEIRCE,  
*Secretary of the Commonwealth.*

COMMONWEALTH OF MASSACHUSETTS,  
SECRETARY'S DEPARTMENT, BOSTON, Feb. 9, 1887.

A true copy.

Witness the seal of the Commonwealth.

HENRY B. PEIRCE,  
*Secretary of the Commonwealth.*

Seal of the  
Commonwealth.

Seal of the  
Commonwealth.

