

HOUSE . . . . No. 821.

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[Bill accompanying the petition of Willard Howland. Harbors and Public Lands and Prisons.]

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Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-seven.

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AN ACT

To authorize the Construction of a Canal Across  
Cape Cod by Convict Labor.

*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 commissioners of prisons, and  
2 the board of harbor and land commissioners are,  
3 for the purposes of this act, constituted a joint  
4 board, except as to matters hereinafter specified,  
5 in which authority is especially reserved to, or  
6 conferred upon, either of said boards of commis-  
7 sioners.

1 SECT. 2. The commissioners of prisons, and  
2 said board of harbor and land commissioners shall,

3 as soon as may be after the passage of this act,  
4 convene and organize as a joint board by the  
5 choice from among their numbers of a chairman  
6 and secretary of such joint board. And said joint  
7 commissioners, constituted of the members of said  
8 commissioners of prisons and said board of harbor  
9 and land commissioners, shall be known as the  
10 canal commissioners.

1 SECT. 3. The persons employed in the con-  
2 struction of the canal, except such as may be em-  
3 ployed as engineers, superintendents, keepers or  
4 guards, shall be selected in accordance with such  
5 rules and regulations as the commissioners of  
6 prisons may establish, from among the inmates of  
7 the penal institutions of the Commonwealth, and  
8 while so employed such prisoners shall be under  
9 the jurisdiction of, and subject to the control of,  
10 said commissioners of prisons, who shall provide  
11 for the proper care, safety, security and main-  
12 tenance of such prisoners.

1 SECT. 4. Said canal commissioners shall lo-  
2 cate and construct, and thereafter the board of  
3 harbor and land commissioners shall maintain  
4 and operate a ship canal, beginning at some  
5 convenient point on Buzzard's bay, and running  
6 through the towns of Bourne and Sandwich to  
7 some convenient point in Barnstable bay; and  
8 shall locate, construct and maintain all such  
9 wharves, docks and other structures and works as  
10 may be necessary for the convenient using of said

11 canal, together with the highways provided by this  
12 act; and may maintain and operate steam tugs,  
13 or use any other means and methods for assisting  
14 vessels in their approach to and passage through  
15 and from the canal. Said canal, when constructed,  
16 shall have a depth of not less than twenty-three  
17 feet at mean low water, shall be of a width of not  
18 less than ninety feet at the bottom, and not less  
19 than three hundred feet at the top.

1     SECT. 5. The material excavated from the  
2 waters of Buzzard's bay and Barnstable bay  
3 shall be so disposed of, under the direction of the  
4 harbor and land commissioners, as not to unneces-  
5 sarily interfere with the fishing interest; and ma-  
6 terials excavated from the trunk of said canal  
7 upon the land shall be deposited, as far as prac-  
8 ticable, within the limits of the location of the  
9 canal.

1     SECT. 6. Said canal commissioners may lay  
2 out and take the location of the canal, not ex-  
3 ceeding one thousand feet wide, and said canal  
4 commissioners may take the fee of land within  
5 such location for the purpose of constructing said  
6 canal, or for disposing of the material excavated  
7 from said canal, and shall file the location thereof  
8 on the registry of deeds for the county of Barn-  
9 stable, with a map showing the boundaries thereof,  
10 which shall be recorded in the registry of deeds,  
11 and define the courses, distances and boundaries  
12 thereof in the manner provided for filing railroad  
13 locations.

1   SECT. 7. All damages occasioned by the lay-  
2 ing out, making and maintaining the canal, or by  
3 taking land or materials therefor, shall be paid  
4 from the treasury of the Commonwealth, and  
5 such damages on the application of the Common-  
6 wealth, or the party claiming to have been dam-  
7 aged, shall be estimated by the county commis-  
8 sioners for the county of Barnstable, in the  
9 manner, and subject to the rules of law provided  
10 for determining the damages for taking land in  
11 laying out railroads. The party dissatisfied with  
12 the estimate of the county commissioners may at  
13 any time within one year after it is completed  
14 and returned, apply by petition to the superior  
15 court for a jury to assess the damages, and like  
16 proceeding shall be had thereon as in proceedings  
17 to recover damages for laying out railroads ex-  
18 cept that the Commonwealth shall not be required  
19 to give any bonds in such proceedings.

1   SECT. 8. The board of railroad commissioners  
2 shall act with and as a part of said canal com-  
3 missioners for the purposes hereinafter stated,  
4 namely, to determine at what point or points the  
5 railroad shall cross said canal by a combined high-  
6 way and railroad bridge or bridges; said canal  
7 commissioners, after notice to the railroad com-  
8 pany and to all other parties interested, which  
9 notice shall be served in such form as said canal  
10 commissioners shall direct, shall determine said  
11 question as to the point or points where said rail-  
12 road shall cross said canal, and as to the construc-

13 tion of the bridge or bridges, and the decision of  
14 said canal commissioners, or a majority of them,  
15 shall be final.

1   SECT. 9. Said canal shall be constructed with  
2 such structures and appliances for its protection  
3 and use as the canal commissioners may order,  
4 together with such bridge or bridges, ferries and  
5 changes of highways as said canal commissioners  
6 shall approve.

1   SECT. 10. The board of railroad commissioners  
2 and the county commissioners for the county of  
3 Barnstable, after due notice and hearing of all  
4 parties interested, shall determine and prescribe  
5 in writing the time when, and the manner in  
6 which the railroad company shall alter its location  
7 so as to cause said canal, at such point or points  
8 as may have been determined upon by the canal  
9 commissioners, as herein before provided. In  
10 making such alterations the railroad corporations  
11 shall have all the powers and privileges, and be  
12 subject to all the duties, restrictions and liabilities  
13 set forth in all general laws relating to railroads.  
14 The damages of land owners shall be assessed  
15 against, and shall be paid by the Commonwealth.  
16 The railroad corporation shall proceed to build  
17 the railroad upon the new location, and complete  
18 the same in such manner as may be prescribed by  
19 the railroad commissioners, and to their satisfac-  
20 tion.

1   SECT. 11. The Commonwealth shall pay all

2 damages caused by the construction of said rail-  
3 road upon such new location, and shall be liable  
4 for such damages as are assessed in the case of  
5 the construction of railroads.

1     SECT. 12. The railroad corporation shall have  
2 its location not exceeding five rods wide, upon  
3 land owned or located upon by said canal com-  
4 missioners, up to said bridge, on each side thereof,  
5 upon a location approved by the board of railroad  
6 commissioners: *provided*, that all reasonable use  
7 of said location for the purpose of operating the  
8 canal, and for highway purposes, shall be per-  
9 mitted.

1     SECT. 13. The railroad corporation, upon the  
2 completion and acceptance by the board of rail-  
3 road commissioners, of the newly constructed  
4 railroad and bridge or bridges, as above pro-  
5 vided, may, at its option take such iron, and other  
6 materials as may remain upon that portion of the  
7 line of said railroad which is to be given up, and  
8 shall allow, or pay the value thereof, such value  
9 to be determined by the board of railroad com-  
10 missioners and the county commissioners of the  
11 county of Barnstable, in case said corporation  
12 does not agree with said canal commissioners  
13 upon such value. The title of the railroad cor-  
14 poration to the land upon the old location of the  
15 railroad corporation, shall, upon the completion  
16 and acceptance by the board of railroad commis-  
17 sioners, and the county commissioners of the

18 county of Barnstable, of the newly constructed  
19 railroad become the property of the Common-  
20 wealth.

1    SECT. 14. Whoever unnecessarily opens, shuts  
2 or obstructs the draw in said bridge or bridges  
3 without the consent of the superintendent, or  
4 without such consent makes fast or moors to, or  
5 being in charge thereof refuses to unmoor or un-  
6 loose any scow, raft, water craft or vessel from  
7 any of said bridge or bridges within wake of the  
8 draw shall pay a fine not less than three dollars  
9 nor more than fifty dollars. Whoever wilfully  
10 injures or damages said bridges, wharves, piers  
11 or property of any kind used in connection with  
12 said canal, or wilfully disturbs or hinders the  
13 superintendent or his assistants in the discharge  
14 of their duties shall forfeit for each offence a sum  
15 not exceeding one hundred dollars and be further  
16 liable in damages to the Commonwealth, to be re-  
17 covered in an action of tort. Whoever wilfully and  
18 maliciously obstructs the passage of any vessel,  
19 steam tug or water craft in said canal or obstructs  
20 the approaches to said canal within two thousand  
21 feet of either extremity thereof or in any manner  
22 injures said canal, its banks, bridges, breakwaters,  
23 docks, walls or other structures or works, lights,  
24 buoys, signals or anything appertaining thereto,  
25 or any materials or implements for the con-  
26 struction or use thereof, or aids or abets in such  
27 trespass or injury, shall forfeit to the use of the  
28 Commonwealth for each offence treble the amount

29 of damages proved to have been sustained thereby,  
30 to be recovered in an action of tort in the name of  
31 the Commonwealth, and may be further punished  
32 by a fine not exceeding one thousand dollars or  
33 by imprisonment for a term not exceeding one  
34 year.

1    SECT. 15. The provisions relating to draw-  
2 bridges contained in sections one hundred and  
3 forty-eight to one hundred and fifty-five, inclu-  
4 sive, of chapter one hundred and twelve of the  
5 Public Statutes, shall extend to said bridge or  
6 bridges, so far as applicable except that a railroad  
7 train shall be allowed five minutes to cross said  
8 draw instead of fifteen minutes, as provided in  
9 section one hundred and fifty of said chapter, and  
10 except that said drawbridge or bridges may be  
11 kept open at all times, except when closed for the  
12 actual passage of trains.

1    SECT. 16. There shall be provided and main-  
2 tained at Bourne-dale and Sagamore, as herein-  
3 before provided, at such points as may be des-  
4 ignated by the county commissioners of the  
5 county of Barnstable, suitable ferries across the  
6 canal for passengers and teams, to be operated  
7 free from toll, under reasonable rules, to be estab-  
8 lished by the county commissioners, except that  
9 no ferry shall be required to be maintained if a  
10 highway bridge or tunnel shall be built at or near  
11 any of said places. Said commissioners shall pro-  
12 vide a means of crossing said canal as soon as  
13 the highway is destroyed.



1 SECT. 17. There shall also be constructed  
2 highways to connect with the bridge or bridges,  
3 tunnel or tunnels, and ferries herein provided for,  
4 and such other highways as may be necessary to  
5 replace the highways destroyed by the construc-  
6 tion of said canal, in such manner, and at such  
7 time as said county commissioners shall prescribe  
8 upon each side of said canal. After the comple-  
9 tion of such highways, and their acceptance by  
10 said county commissioners, the Commonwealth  
11 shall not be responsible for the further mainten-  
12 ance of the same.

1 SECT. 18. There shall also be made such suit-  
2 able provisions for the continuance of the herring  
3 fishery in Monument river and Herring pond, and  
4 the waters tributary thereto, as the commission-  
5 ers on inland fisheries may prescribe; and in case  
6 of injury to any oyster fishery the Commonwealth  
7 shall pay to the owner thereof such damages as  
8 shall, upon application, be estimated by said com-  
9 missioners on inland fisheries in a manner similar,  
10 so far as may be, to that provided in case of the  
11 laying out of highways and with similar right of  
12 appeal to the superior court for a jury by proceed-  
13 ings like those provided for in a preceding section  
14 of this act.

1 SECT. 19. The board of harbor and land com-  
2 missioners may establish a reasonable toll upon all  
3 vessels or water craft of whatever description  
4 which may use the canal, and such charges as the

5 said board may establish all reasonable regula-  
6 tions for the use of said canal, and may fix a rate  
7 for the towing of such vessel or water craft which  
8 may require it on its passage to, through and  
9 from said canal.

1     SECT. 20. Whoever fraudulently evades or at-  
2 tempts to evade the payment of any toll lawfully  
3 established under the preceding section of this  
4 act, or who shall misrepresent the register or  
5 draught, or any other facts concerning any vessel  
6 or water craft in his charge, shall be liable to a fine  
7 of not less than five, nor more than five hundred  
8 dollars, and such offence shall be punishable in  
9 any county of the Commonwealth.

1     SECT. 21. There shall be paid by the treasurer  
2 of the Commonwealth, under the provisions of  
3 this act, to the members of said canal commis-  
4 sioners, for the performance of the duties imposed  
5 on them by provisions of this act, such sum of  
6 money as shall be fixed by the governor and  
7 council as compensation to the members of said  
8 canal commission.

1     SECT. 22. The treasurer of the Common-  
2 wealth is hereby authorized to issue bonds of the  
3 Commonwealth to an amount not exceeding five  
4 hundred thousand dollars, which bonds shall be  
5 payable twenty years from the date thereof, and  
6 bear interest at the rate of three per cent. per  
7 annum. From the proceeds of the sale of said

8 bonds there shall be paid such expenditures as  
9 said canal commission shall incur, pursuant to the  
10 provisions of this act, but the cost of the mainten-  
11 ance, care and custody of the prisoners employed  
12 in the construction of the canal, shall be paid  
13 from such appropriations as may be made for the  
14 support of the penal institutions of the Common-  
15 wealth as may be approved by the commissioners  
16 of prisons. All sums received from tolls or other  
17 charges in the operation of and for the use of  
18 said canal over and above the cost of maintaining  
19 the said canal and operating the same, shall be  
20 paid to the treasurer of the Commonwealth, to be  
21 in his hands to be invested by him as a sinking  
22 fund for the redemption of the bonds issued pur-  
23 suant to the provisions of the act; and when said  
24 treasurer shall have received into said sinking  
25 fund an amount equal to the entire expenditure  
26 made by the Commonwealth in the construction  
27 of said canal and its appurtenances, including the  
28 cost of maintenance, care and custody of said  
29 prisoners, then said canal shall be opened for  
30 public use, free of toll.

