

HOUSE No. 1576

Mr. McFarland of Boston gives notice he will move that the Bill enabling cities and towns to secure the benefits provided by the National Industrial Recovery Act (House, No. 1571) be amended by adding at the end thereof the accompanying sections. July 13.

PART II.

CONSTRUCTION OF A SUBWAY UNDER HUNTINGTON AVENUE IN THE CITY OF BOSTON.

1 SECTION 1. The following words as used in Part II
2 of this act shall, unless the context otherwise requires,
3 have the following meanings: —

4 “City” shall mean the city of Boston.

5 “Company” shall mean the Boston Elevated Rail-
6 way Company, its successors and assigns. During the
7 period of public control the board of trustees of the
8 Boston Elevated Railway Company shall have and
9 exercise all the powers of the company under this act.

10 “Department” shall mean the transit department
11 of the city of Boston, or such board or officers as may
12 succeed to its rights and duties.

13 “Premises” shall mean the property authorized to
14 be acquired or constructed by the department under
15 the provisions of section two, except equipment.

16 “Equipment” shall mean the property which the
17 department is authorized to provide and furnish under
18 the provisions of section three.

19 Whenever any act is required or authorized to be
20 done or performed by the department under Part II

21 of this act, such action shall be in the name of and on
22 behalf of the city of Boston, and whenever any action
23 is required or permitted to be taken by the city under
24 Part II of this act, such act shall be performed by the
25 department, unless otherwise expressly provided by
26 Part II of this act.

1 SECTION 2. Provided the emergency finance board
2 established under section one of chapter forty-nine of
3 the acts of the current year, and the governor, approve
4 the public works project hereinafter authorized, and
5 the conditions hereinafter set forth are complied with,
6 the department shall construct in the city an exten-
7 sion of the Boylston street subway from a point at or
8 near the junction of Huntington avenue and Boylston
9 street, thence to and under Huntington avenue ter-
10 minating with an open cut in Huntington avenue in
11 the city at a point between the junction of Hunting-
12 ton avenue with Gainsboro street and the junction of
13 said avenue with Longwood avenue, together with
14 stations at or near Dartmouth street, West Newton
15 street, Massachusetts avenue, and if such subway is
16 extended to a point west of Louis Prang street, with
17 one additional station west of the station at or near
18 Massachusetts avenue; provided such project as so
19 approved is also approved by the proper Federal
20 authorities and a substantial part of the cost of con-
21 struction of said extension can be obtained under the
22 provisions of the National Industrial Recovery Act.
23 Such project so approved shall be carried out in all
24 respects subject to the provisions of title II of the
25 National Industrial Recovery Act and the city may
26 accept and use for the carrying out of such project
27 any grant or loan of Federal funds under said title II.

1 SECTION 3. The department shall provide, equip
2 and furnish the subway extension hereinbefore au-
3 thorized and the stations and approaches thereof and
4 thereto to the same extent and manner as provided
5 in section three of chapter four hundred and eighty of
6 the acts of nineteen hundred and twenty-three, with
7 respect to the railway authorized by said act.

1 SECTION 4. For the purposes of Part II of this act
2 the department shall have all the powers conferred
3 upon the Boston transit commission by chapter five
4 hundred and forty-eight of the acts of eighteen hun-
5 dred and ninety-four and by chapter seven hundred
6 and forty-one of the acts of nineteen hundred and
7 eleven and amendments thereof, either generally or in
8 connection with the construction or operation of any
9 tunnel or subway authorized by said chapters, and
10 like powers as conferred by chapter four hundred and
11 eighty of the acts of nineteen hundred and twenty-
12 three with respect to the works authorized thereunder,
13 and by all other acts conferring authority upon the
14 Boston transit commission or the department.

15 The premises and equipment may be constructed
16 upon, under or over public or private ways or lands in-
17 cluding lands devoted to the public use and property
18 belonging to a railroad company.

19 For the purpose of constructing the work authorized
20 by Part II of this act the department may enter upon
21 and use the land of others. Any person injured in
22 his property by such entry or use of his land by the
23 department may recover his damages under chapter
24 seventy-nine of the General Laws.

1 SECTION 5. To meet the cost of the premises and

2 equipment the city may issue bonds which shall be
3 designated on their face Huntington Avenue Subway
4 Bond, Acts 1933, in the same manner as bonds issued
5 under section eleven of said chapter four hundred and
6 eighty of the acts of nineteen hundred and twenty-
7 three and the provisions of said section shall apply to
8 the premises and equipment and all action taken un-
9 der authority of this section, provided, however, that
10 the city shall obtain as large a sum as is possible
11 under the provisions of the National Industrial Re-
12 covery Act.

1 SECTION 6. All rentals or other payments received
2 by the city under Part II of this act shall be used so
3 far as necessary for the payment of interest on the
4 obligations incurred hereunder and the balance shall
5 be used for the payment of the principal thereof or
6 the accumulation of a sinking fund therefor. All
7 indebtedness incurred under Part II of this act shall
8 be outside of the statutory limit of indebtedness of
9 the city.

1 SECTION 7. No construction work shall be done
2 under Part II of this act, however, unless and until
3 a plan therefor shall be approved by the commission
4 or the department of public utilities and unless and
5 until a contract between the city and the company
6 shall have been executed for the sole and exclusive
7 use by the company of the premises and equipment
8 for a term beginning with the use thereof and ending
9 upon the termination of the lease or contract for use
10 of said Boylston street subway. Any plan so approved
11 may be altered at any time by a new plan approved in
12 like manner except that after the execution of said

13 contract for use no such alteration shall be made
14 without the consent thereto of the company in writing
15 nor at any time except with the approval of said
16 emergency finance board, the governor and such
17 approvals as may be required under the provisions of
18 the National Industrial Recovery Act or regulations
19 made thereunder. The contract shall be in the same
20 general form as that authorized by said chapter four
21 hundred and eighty, except in so far as any other
22 provision may be agreed upon by the department
23 and the company as specially applicable to the de-
24 mised premises. The net cost of the premises and
25 equipment shall be determined in the manner pro-
26 vided in said chapter four hundred and eighty, except
27 that there shall be deducted from the amount so de-
28 termined all amounts received by the city as direct
29 grants, or by remission of bonds or other obligations,
30 or in any manner or form whatsoever amounting in
31 substance directly or indirectly to a contribution to
32 the cost of the premises and equipment under the
33 National Industrial Recovery Act. The rental shall
34 be payable annually on the twenty-fifth day of July
35 in each year. Such contract for use shall provide
36 that the company shall pay to the city for each full
37 year ending with the last day of June, and ratably for
38 any portion of the year, an annual rental which shall
39 be sufficient to provide an amount equal to one half
40 of one per cent of the net cost of the premises and
41 equipment in addition to the annual amount of in-
42 terest on bonds issued to pay for said net cost, but
43 not less than four and one half per cent of said net
44 cost in any event; provided, however, that said an-
45 nual rental shall be payable by the company in any
46 year only if and to the extent that the reserve fund

47 provided for by section five of chapter one hundred
48 and fifty-nine of the Special Acts of nineteen hundred
49 and eighteen exceeds on the last day of June the
50 amount originally established; provided, however,
51 that such excess shall be determined and the obliga-
52 tion to pay the rental shall accrue only after deducting
53 from said reserve fund the full amount of the rental
54 payable under any contracts executed under the au-
55 thority of chapter three hundred and forty-one of the
56 acts of nineteen hundred and twenty-five as amended
57 and after fully reimbursing the commonwealth as
58 provided in sections eleven and thirteen of said
59 chapter one hundred and fifty-nine. If by virtue of
60 the foregoing provisos the company does not make
61 the full rental payment as above provided for the
62 premises and equipment authorized by this act, the
63 city shall place any amounts so unpaid in its next
64 ensuing tax levy.

1 SECTION 8. The provisions of chapter five hundred
2 and fifty of the acts of nineteen hundred and seven
3 as amended, and of sections one hundred and ten and
4 one hundred and eleven of chapter one hundred and
5 forty-one of the General Laws as appearing in the
6 Tercentenary edition thereof shall not apply to the
7 work authorized by Part II of this act.

1 SECTION 9. Upon acceptance of Part II of this act
2 by vote of the city council of the city, approved by
3 the mayor, the department shall immediately make
4 such preliminary investigations, surveys and plans as
5 it may deem expedient, and to that end may enter
6 upon any lands and place and maintain marks therein
7 and may make excavations and borings and do all

8 other acts necessary for such investigations and sur-
9 veys. The department may expend such sums as it
10 deems necessary therefor. The expenses incurred in
11 making such preliminary investigations, surveys and
12 plans shall be paid from the loans authorized by
13 chapter seven hundred and forty-one of the acts of
14 nineteen hundred and eleven, but if and when the
15 construction is begun hereunder, the amount so
16 expended shall be transferred and charged to the cost
17 of the premises.

1 SECTION 10. The department may make contracts
2 for work authorized by Part II of this act but all con-
3 tracts subject thereto shall comply with all require-
4 ments of the National Industrial Recovery Act and
5 all contracts involving two thousand dollars or more
6 in amount shall be in writing and signed by a majority
7 of the department. No such written contract shall be
8 altered except by an instrument in writing, signed by
9 the contractor and a majority of the department, and
10 also by the sureties on any bond given by the contrac-
11 tor for the completion of the original contract. No
12 such contract and no alteration of any such contract
13 shall be valid or binding on the city unless executed in
14 the manner aforesaid.

1 SECTION 11. Notwithstanding anything in Part II
2 of this act contained, the department is hereby author-
3 ized to construct and equip said premises in accord-
4 ance with any requirements of the National Industrial
5 Recovery Act or rules and regulations made there-
6 under and to take any action in its judgment necessary
7 in order to procure as nearly as it deems practicable
8 the maximum amount obtainable under said act as a

9 direct grant and the maximum amount which may be
10 borrowed under the provisions of said act.

1 SECTION 12. Said contract for use shall not in any
2 respect impair any right which the commonwealth or
3 any political subdivision thereof may at any time
4 have to take the railway properties and rights of the
5 company or any right which the commonwealth or
6 any political subdivision thereof may have under sec-
7 tion sixteen of chapter one hundred and fifty-nine of
8 the Special Acts of nineteen hundred and eighteen or
9 under section seventeen of chapter three hundred and
10 thirty-three of the acts of nineteen hundred and
11 thirty-one. In the event of such taking the compensa-
12 tion to be paid to the company shall not be enhanced
13 by reason of such contract nor shall it be diminished
14 because of the fact that without it properties might
15 be cut off.

1 SECTION 13. The provisions of Part I of this act,
2 so far as inconsistent with Part II, shall not apply to
3 Part II, nor preclude action thereunder.

1 SECTION 14. Part II of this act shall take effect
2 upon its acceptance both by vote of the city council
3 of the city of Boston, approved by the mayor, and by
4 the Boston Elevated Railway Company by vote of
5 its board of directors, and upon the filing of certificates
6 of such acceptances with the state secretary, provided
7 that such acceptances, approval and filing occur
8 during the current year, except that section nine shall
9 take effect as provided therein.