

# HOUSE . . . . No. 1780

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Ordered printed as a House document, on motion of Mr. Lyman of Easthampton. May 26.

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## The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Nineteen.

### AN ACT

To promote the Conservation, Development and Utilization of Water Resources within 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 SECTION 1. In this act, unless the context otherwise  
2 requires, "commission" means the commission on water-  
3 ways and public lands, and "river" means and includes  
4 any river or waterway within the commonwealth and  
5 all other rivers or waterways within the commonwealth  
6 through which the waters of such river or waterway flow  
7 to the sea, whether such rivers or waterways be navigable  
8 or non-navigable. "Owner" means owner or lessee of a  
9 water mill or dam located within the commonwealth.

1 SECTION 2. Owners of water mills and dams on any  
2 river may, subject to the provisions of this act, organize

3 themselves as a corporation for the purpose of regulating  
4 the flow and increasing the usefulness of such river by  
5 acquiring, constructing and operating storage reservoirs  
6 in and along said river within the commonwealth.

1 SECTION 3. Upon the written application of three or  
2 more owners on any river in the commonwealth to a  
3 justice of the peace, stating that they intend to organize  
4 a corporation under the provisions of this act, and the  
5 names of all owners on said river known to the applicants,  
6 he shall issue his warrant to one of the applicants direct-  
7 ing him to call a meeting, to be held within the common-  
8 wealth, of all said owners on said river and expressing in  
9 the warrant the time, place and purpose of the meeting.  
10 The meeting shall be called by publishing a notice con-  
11 taining the substance of the warrant, signed by the  
12 person to whom the warrant is directed, in a newspaper  
13 published in each county through which said river flows,  
14 once each week for three successive weeks prior to the  
15 meeting, and by mailing a copy thereof, by registered  
16 mail, fourteen days at least before the meeting to the  
17 owners named in said application. All meetings of the  
18 corporation shall be held within the commonwealth.

1 SECTION 4. At such meeting, by vote of a majority in  
2 number of all owners of water mills and of dams located  
3 on said river, each water mill and each dam involved  
4 being entitled to a single representative, and a majority  
5 in interest of all said owners, said interest being measured  
6 in gross developed hydraulic horsepower of the respective  
7 developments, said owners may organize themselves as a  
8 corporation under the provisions of this act and the  
9 corporate name assumed shall contain the words "im-  
10 provement company" at the end thereof. The organ-

11 ization shall be effected and certified to the secretary of  
12 the commonwealth, and he shall issue his certificate of  
13 incorporation in the manner set forth in and subject to  
14 the provisions of sections nine and ten of chapter seven  
15 hundred and forty-two of the acts of the year nineteen  
16 hundred and fourteen. Said corporation shall be in all  
17 other respects subject to the first ninety-one sections of  
18 said chapter, so far as the same may be applicable and  
19 not inconsistent herewith, but the approval of the issue  
20 of stock and bonds by said corporation shall vest in the  
21 commission and said corporation may issue bonds to such  
22 amount in excess of the amount of its capital stock  
23 actually paid in at the time of such issue as the com-  
24 mission may authorize. Any corporation which is an  
25 owner on said river, if authorized by vote of its stock-  
26 holders so to do, may be represented at and participate  
27 in said meeting, and may acquire and hold shares in such  
28 improvement company.

1 SECTION 5. The owners participating in such first  
2 meeting for organization shall hold the franchise until the  
3 organization has been completed, but all owners on said  
4 river shall be entitled to take shares of the original cap-  
5 ital stock authorized at said first meeting in proportion  
6 to their respective interests as defined in the preceding  
7 section, or in case of dispute, as determined by the com-  
8 mission. Shares in said improvement company shall be  
9 transferable only to successors in title to said owners, and  
10 only upon approval of the commission after a hearing  
11 thereon, and this restriction shall be so expressed on the  
12 certificates thereof.

1 SECTION 6. Before acquiring or constructing any stor-  
2 age reservoir, or incurring any obligations in connection

3 therewith, other than for preliminary expenses, surveys  
4 and reports, the corporation shall file with the commission  
5 plans and a statement of the cost of any reservoir to be  
6 acquired, and plans and specifications of any reservoir to  
7 be constructed, showing in detail the manner in which  
8 such reservoir is to be constructed and its estimated  
9 capacity and cost, and such other engineering and finan-  
10 cial data as the commission may require. The commis-  
11 sion, after such notice as it may order and a public  
12 hearing, shall itself estimate the cost of each such reser-  
13 voir, and the benefits to accrue therefrom, and shall ap-  
14 prove or disapprove the acquisition and construction  
15 thereof. If the commission shall approve the acquisition  
16 or construction of any such reservoir, it shall likewise  
17 determine the owners whose dams or water mills will be  
18 benefited thereby, and the estimated extent of the several  
19 benefits. A copy of the estimate and determination of  
20 the commission shall be sent by registered mail to each  
21 of said owners so determined to be benefited. Upon and  
22 after the expiration of ninety days from the mailing of its  
23 determination as above set forth, the commission may  
24 by order authorize the acquisition or construction of such  
25 reservoir in accordance with such plans and specifications,  
26 or as the same may be amended by the commission after  
27 notice and a public hearing, but the acquisition or con-  
28 struction of such reservoir shall not be ordered by the  
29 commission unless prior to the making of such order for  
30 the acquisition or construction of such reservoir a ma-  
31 jority in number and a majority in interest of all said  
32 owners situated below said reservoir and receiving the  
33 water therefrom, as such number and interest are re-  
34 spectively defined in section four of this act, shall file  
35 with the commission their written consent to the acqui-  
36 sition or construction of such reservoir. Such order shall

37 contain a list of the owners who may be chargeable with  
38 the tolls in connection with such reservoir, and a copy  
39 thereof shall be recorded in the registry of deeds for  
40 each county or district in which the dams or water mills  
41 of such owners are situated. Such plans and specifica-  
42 tions may thereafter during the progress of the work be  
43 modified by the corporation with the approval of the  
44 commission, after like hearing, notice and approval of  
45 owners as hereinbefore provided. The order of the com-  
46 mission authorizing the acquisition or construction of  
47 such reservoir shall become void unless such reservoir  
48 shall be acquired or constructed within two years after  
49 the date of such order or within such further time as the  
50 commission may determine, after such hearing, notice and  
51 approval.

1 SECTION 7. Upon petition of the corporation alleg-  
2 ing that it is unable to acquire by purchase lands  
3 or rights described in said petition necessary for the  
4 construction of a storage reservoir authorized by the  
5 commission and setting forth the name or names of the  
6 owner or owners of said lands or rights so far as known  
7 to the petitioner, the commission may by order authorize  
8 the corporation to take such lands or rights by eminent  
9 domain in the manner provided by section one hundred  
10 and eighty-seven of chapter two hundred and fifty-seven  
11 of the General Acts of the year nineteen hundred and  
12 eighteen. Before authorizing such taking a public hear-  
13 ing shall be held, of which notice shall be served upon  
14 the owner or owners mentioned in said petition at least  
15 fourteen days before the hearing in the manner provided  
16 for the service of writs returnable to the superior court,  
17 and by such publication as the commission may order.  
18 The commission may require the corporation to give such

19 security as the commission may deem adequate for the  
20 payment of damages resulting from the taking. Nothing  
21 in this section shall authorize a corporation organized  
22 hereunder to take or injure a public water supply and  
23 the state department of health shall be notified of all  
24 hearings of petitions under this section.

1 SECTION 8. The provisions of chapter one hundred  
2 and ninety-six of the Revised Laws, and acts in amend-  
3 ment thereof and in addition thereto, shall apply to the  
4 flowage of lands of other persons by any dam constructed  
5 under the provisions of this act, save as is herein  
6 otherwise provided.

1 SECTION 9. The corporation shall so operate its reser-  
2 voirs as to maintain as nearly a uniform flow of water at  
3 all times in said river as is practicable by storing surplus  
4 water in times of great supply, and discharging the same  
5 in times of drought and scarcity, in such manner as shall  
6 be for the greatest common advantage to the owners on  
7 said river. The operation of any storage reservoir shall  
8 be subject to the supervision of the commission, which  
9 upon the petition of any interested party may from time  
10 to time by order direct the manner of operating the same,  
11 including the times when and the amounts of water which  
12 shall pass through the gates of any dam of the corpora-  
13 tion. The corporation shall maintain in connection with  
14 its reservoir such wiers, gauges and other instruments,  
15 conveniently located and open to the inspection of the  
16 commission as shall indicate with substantial accuracy  
17 the amount of water which passes the gates of each  
18 reservoir and shall keep such records of rainfall, stream  
19 flow and storage facilities as may be approved from  
20 time to time by the commission. The commission may

21 determine the height to which water may be raised by  
22 any dam or other structures erected or maintained by the  
23 corporation, and such height shall be indicated by per-  
24 manent bench marks.

1 SECTION 10. No storage reservoir constructed under  
2 the provisions of this act shall be abandoned or alienated  
3 by a corporation, except by permission of the commission  
4 and subject to such conditions as it shall impose after such  
5 notice as the commission may order and a public hearing  
6 thereon.

1 SECTION 11. When the corporation has created or  
2 acquired such water storage on said river or its tribu-  
3 taries as has been approved by the commission, it shall  
4 be entitled to charge and collect just and reasonable  
5 tolls upon and from the owners on said river below such  
6 reservoir or reservoirs in proportion to the respective  
7 benefits derived by the several owners. *Provided, how-*  
8 *ever,* that in no event shall tolls be charged or collected  
9 from any owner of an amount in excess of the actual  
10 net commercial value to such owner of the benefits of  
11 stored water from such reservoir or reservoirs actually  
12 received and used; and *provided, further,* that in the  
13 event that any existing reservoir is acquired by a corpo-  
14 ration organized under the provisions of this act, no  
15 toll shall be charged for any water stored thereby unless  
16 the capacity of the same be increased, and then only to  
17 the extent of the increase. The list of persons and  
18 corporations chargeable with tolls may, because of altered  
19 conditions arising since its estimates were made under  
20 the provisions of section six, be revised by the com-  
21 mission at any time upon the written complaint of any  
22 party interested after notice and a public hearing as

23 hereinbefore provided, and shall be so revised after like  
24 notice and hearing upon its own notion not oftener  
25 than every three years, and each order of revision shall  
26 be recorded as above provided. The corporation may,  
27 subject to the approval of the commission, make agree-  
28 ments relative to the payment of tolls by owners of  
29 water mills or dams on said river beyond the limits of  
30 the commonwealth.

1 SECTION 12. Tolls established and determined as pro-  
2 vided in the preceding section shall be assessed by the  
3 corporation to the respective owners to whom the same  
4 are chargeable semiannually on January and July first  
5 of each year for the six months next preceding. Such  
6 assessments shall be due and payable within thirty days  
7 after written notice thereof is given to the owner to  
8 whom the same is chargeable, and thereafter shall bear  
9 interest at the rate of six per cent per annum.

1 SECTION 13. A corporation organized under the pro-  
2 visions of this act may make such lease or other dis-  
3 position of the water power created by any reservoir  
4 dam owned by it as the commission may approve, *pro-*  
5 *vided, however,* that in no event shall the corporation  
6 itself engage in the generation of electricity.

1 SECTION 14. At any time after ten years from the  
2 date of its certificate of incorporation the commonwealth  
3 shall have the right to take or purchase the whole or  
4 any part of the franchise, corporate property and all  
5 rights and privileges of said corporation on payment to  
6 said corporation of the fair value thereof for the purpose  
7 of its use; but if a part only of such franchise, corporate  
8 property, rights and privileges is so taken or purchased,



9 there shall be added thereto the damages, if any, caused  
10 by its severance from the remainder of such franchise,  
11 corporate property, rights and privileges. In case the  
12 commonwealth shall desire to exercise its rights here-  
13 under and shall be unable to agree upon said fair value,  
14 the supreme judicial court shall have jurisdiction in  
15 equity to ascertain and fix said fair value, and to en-  
16 force the right of the commonwealth to the title and  
17 possession of said franchise, property rights and privi-  
18 leges upon payment thereof to the corporation as deter-  
19 mined by the court.

1 SECTION 15. The corporation shall annually on or  
2 before the first day of February make a report to the  
3 commission in a form prescribed by it for the preceding  
4 calendar year signed and sworn to by its president and  
5 treasurer and a majority of the directors. Such report  
6 shall contain in such detail as the commission may pre-  
7 scribe full information with respect to its financial and  
8 physical operations and condition, and shall at all times  
9 furnish any information required by the commission  
10 or its duly authorized employees. The corporation shall  
11 keep such records of the operation of its plant as the  
12 commission may from time to time require. The com-  
13 mission shall have free access for its members or duly  
14 authorized employees at any and all reasonable times to  
15 all the property, books, records, contracts, documents,  
16 papers and memoranda of said corporation.

1 SECTION 16. If within three years from the passage  
2 of this act the owners of the water mills and dams on  
3 any river shall have failed to acquire or develop storage  
4 reservoirs thereon the commission may devise projects

5 and prepare plans and specifications and obtain estimates  
6 for regulating the flow and increasing the usefulness of  
7 such river. At such time or times during the preparation  
8 thereof, as the commission may deem best, it shall give  
9 public hearings to the owners of water mills and dams  
10 on said river and to all other persons interested after  
11 such notice as the commission may require, and upon the  
12 completion thereof it shall recommend to the parties in  
13 interest that they forthwith proceed with the projects  
14 so devised in accordance with the provisions of this  
15 act. In case of their failure to act within two years of  
16 the commission's recommendation, the commission shall  
17 submit the same to the next general court with such  
18 recommendations as it may deem proper.

1 SECTION 17. In furtherance of the purposes of this  
2 act the commission may confer and co-operate with  
3 officials, boards and commissions of the commonwealth,  
4 of the United States, and of states within the limits of  
5 which any of the rivers defined in section one rises or  
6 flows, or in which rivers and water resources exist capable  
7 of furnishing power to the industries of the common-  
8 wealth, and may appear or be represented at hearings  
9 before legislative committees or officials, boards or com-  
10 missions of the United States or other states relative to  
11 matters affecting the water resources or power available  
12 to the industries of the commonwealth.