

HOUSE No. 548.

[House No. 523, as passed to be engrossed.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Eighty-eight]

AN ACT

To incorporate the Boston and Suburban Elevated
Railway Company.

*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. Sylvester B. Hinckley, Albert D.
2 S. Bell, John H. Wilkinson, Eben Hutchinson,
3 Nathaniel B. Mansfield, Henry Bradlee, Sumner
4 B. Pearmain, their associates and successors, are
5 hereby made a corporation under the name of the
6 Boston and Suburban Elevated Railway Com-
7 pany, for the purpose of constructing, main-
8 taining and operating an elevated railway in the
9 city of Boston, and from Boston to Lynn, through
10 Chelsea, Everett and Revere, or any of them.

1 SECT. 2. Said corporation shall be deemed a
2 street railway corporation, and shall be governed
3 by the provisions of chapter one hundred and
4 thirteen of the Public Statutes, and the acts in
5 addition thereto, and of section eight of chapter
6 four hundred and thirteen of the acts of the year
7 eighteen hundred and eighty-seven, so far as the
8 same are applicable.

1 SECT. 3. Said corporation shall have the right
2 to cross navigable waters, either upon existing
3 bridges or structures to be erected by it, and the
4 location of said railway across Charles River shall
5 not be north of the southerly line of the Navy
6 Yard ; and wherever said railway shall cross
7 navigable waters it shall be suitably provided
8 with a draw-bridge or bridges, so as not un-
9 necessarily to obstruct navigation ; and said cor-
10 poration in its methods of crossing such navigable
11 waters, and in all questions relating to the con-
12 struction of such bridge or bridges shall be
13 subject to the directions of the land and har-
14 bor commissioners. Sections one hundred and
15 forty-eight to one hundred and fifty-five of chap-
16 ter one hundred and twelve of the Public Statutes
17 shall be applicable to this corporation.

1 SECT. 4. The amount of capital stock of said
2 corporation shall be one million dollars ; and if
3 more than four miles of road shall be constructed,
4 the capital stock shall be two hundred and fifty

5 thousand dollars for each mile of single-track
6 road, and the capital may be increased to such
7 additional amount in accordance with the provi-
8 sions of chapter one hundred and thirteen of the
9 Public Statutes. Not less than fifty per cent. of
10 the capital of one million of dollars shall be paid
11 in cash before the construction of the railway
12 shall be commenced.

1 SECT. 5. Said corporation may issue coupon or
2 registered bonds to an amount which does not
3 exceed in all the capital stock of the corporation
4 actually paid in at the time, to provide additional
5 means, if required, for building and completing
6 said road, and paying damages arising therefrom,
7 and for funding any floating debt properly in-
8 curred, and for the payment of money borrowed
9 for any lawful purpose, and may mortgage or
10 pledge as security for the payment of such bonds
11 a part or all of its real or personal property or
12 franchise. Said bonds shall be issued and said
13 mortgages and pledges shall be made in con-
14 formity to the provisions of sections sixty-two to
15 seventy, inclusive, of chapter one hundred and
16 twelve of the Public Statutes, so far as the same
17 can be applied to said corporation.

1 SECT. 6. The board of aldermen or selectmen
2 of the cities and towns herein named, in case of
3 a grant of location in any street or highway,
4 shall prescribe the height at which the lowest

5 part of the girder supporting the tracks shall be
6 from the ground. The grade of tracks, if any,
7 shall be established by the company, subject to
8 the approval of the board of railroad commis-
9 sioners.

1 SECT. 7. Such railways shall not be opened to
2 public travel until the safety and strength thereof
3 and of the rolling-stock and motive-power shall be
4 examined and approved by the board of railroad
5 commissioners, or by a competent engineer to be
6 appointed by them, and to be paid by said corpo-
7 ration a price to be fixed by said board.

1 SECT. 8. The provisions of section fourteen
2 of chapter one hundred and thirteen shall apply to
3 said corporation. This corporation may take, in
4 the manner prescribed in sections ninety-one to
5 ninety-three, inclusive, of chapter one hundred and
6 twelve of the Public Statutes, as much land as
7 may be necessary for the proper construction and
8 security of the road, or as may be necessary for
9 depot and station purposes.

1 SECT. 9. Said corporation, or the owner of
2 any property taken for such railway, or of any
3 property abutting on streets through which said
4 railway may pass, not so taken, in any manner in-
5 juriously affected or lessened in value, whether
6 by smoke, noise, obstruction of light, air or
7 access, disturbance of quiet enjoyment or other-

8 wise, by the construction, maintenance or oper-
9 ation of said railway, may petition for assessment
10 of the damages, and the petition shall be heard
11 and determined in the same manner and with like
12 effect as now provided by law when real estate is
13 taken for public highways. But said corporation
14 shall not acquire title to any land, nor enter upon
15 any street, until all damages to the owners of
16 land and abutters on any part of the street occu-
17 pied, or to be occupied, by its structure have been
18 paid or secured in a manner satisfactory to the
19 owner, or to be fixed by the superior court or any
20 justice thereof sitting in equity for the county
21 where the land lies, upon the petition of either
22 party and summary hearing. And the erection
23 of the structures authorized by this act in any
24 street shall be deemed a new servitude, for which
25 damages may be claimed by any owner of land
26 having a fee or an easement appendant or appur-
27 tenant to his land, in, on, or over such street, or
28 by any tenant of such owner. But all persons
29 claiming interests in the same estate shall join in
30 one petition. And such petition for damages on
31 any street shall be filed before the expiration of
32 one year after the structures authorized by this
33 act are built or operated in that part of such
34 street contiguous to the petitioner's estate.

1 SECT. 10. The damages and costs recovered
2 or recoverable by any person petitioning therefor,
3 as hereinbefore provided, shall become and be a

4 first lien on all the property of the said corpora-
5 tion, having priority of payment in full, except
6 over debts and taxes due to or assessed by the
7 United States or the Commonwealth, or any
8 county, city, or town in the Commonwealth ; said
9 lien may be enforced for damages and costs, in
10 equity.

1 SECT. 11. Whenever said corporation shall
2 make any excavation in or near any public high-
3 way, or shall set any foundation, pier or post in
4 or near the same, the surface of the street, side-
5 walk, or other ground shall be restored, as soon
6 as practicable, to the condition it was in before
7 the excavation was made, as near as may be; and
8 no interference shall be had with, or change made
9 in, water or gas mains or pipes, sewers, drains or
10 other subterranean works, except with the con-
11 currence of the board of aldermen or selectmen
12 first had and obtained, and upon condition that
13 the same shall be immediately restored to a ser-
14 viceable condition, as good as before the change
15 or disturbance, and at the sole cost and expense
16 of said corporation.

1 SECT. 12. Said corporation shall pay annually
2 two per cent. of its gross earnings into the town
3 or city treasuries of the municipalities through
4 which its track passes, pro rata, according to the
5 length of main track in each. And it shall not
6 charge for passenger fares more than two cents

7 per mile: *provided*, that no fare shall be thus
8 fixed for less than five cents.

1 SECT. 13. This act shall take effect upon its
2 passage.

HOUSE OF REPRESENTATIVES May 23, (P. M.), 1888.

Passed to be engrossed.

Sent up for concurrence.

EDWARD A. McLAUGHLIN, *Clerk*.

