

SENATE . . . . No. 57.

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Commonwealth of Massachusetts.

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SENATE, Feb. 16, 1888.

The Committee on Water Supply, to whom was referred the petition of the city of Cambridge that Fresh Pond in said city may be ceded to it as a storage reservoir, and for authority to take, by purchase or otherwise, lands around said pond for the protection thereof; also for authority to issue additional water bonds, report the accompanying Bill.

For the Committee,

C. W. KINGSLEY.

## Commonwealth of Massachusetts

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

### AN ACT

To provide a Reservoir for the City of Cambridge and to better preserve the Purity of its Water Supply.

*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 city of Cambridge, having  
2 accepted the provisions of chapter two hundred  
3 and fifty-six of the year eighteen hundred and  
4 eighty-four, and constructed an aqueduct convey-  
5 ing the waters of Stony Brook into and through  
6 said city by the way of Fresh Pond as provided  
7 in the said act, now, therefore, for the purpose of  
8 providing a reservoir and storage basin for the  
9 city of Cambridge and preserving the purity of  
10 the waters to be held in said Fresh Pond and dis-  
11 tributed therefrom, and protecting and improving  
12 the shores and vicinity thereof, said city may  
13 within five years after the passage of this act take

14 and hold by purchase or otherwise any part or the  
15 whole of the land and buildings thereon which  
16 lie within the following described boundaries:  
17 Southeasterly by the Watertown branch of the  
18 Fitchburg railroad (from land owned by the  
19 trustees of Jacob Hittinger to Concord avenue),  
20 northeasterly by Concord avenue, northwesterly  
21 by the boundary line between said Cambridge  
22 and the town of Belmont, and southwesterly by  
23 Cushing street, Woodlawn avenue, and the  
24 southerly side of a proposed new street called  
25 Fresh Pond avenue, to the said branch of said  
26 railroad at the place of beginning, and outside  
27 of the present riprapped borders in the pond  
28 as they now exist, and all in the said city  
29 of Cambridge: *provided, however,* that the two  
30 corporations now owning icehouses on said  
31 premises, if they or either of them so elect,  
32 and give written notice to the city clerk of said  
33 Cambridge of their intention so to do, within  
34 sixty days after the filing and recording of the  
35 taking as hereinafter provided, shall be permitted  
36 to cut and remove ice from said pond, and to re-  
37 main in possession of and use their buildings and  
38 premises for a period not exceeding two years  
39 from and after any taking of the same by virtue  
40 of this act. But if such use is availed of, the  
41 same shall be taken into the account in estimat-  
42 ing the damages hereinafter provided for (and  
43 *further provided,* that when a taking is made un-  
44 der the provisions of this act, of the land and  
45 buildings of either of said corporations, the whole

46 of its land and buildings shall be taken, and not  
47 a part of it).

1     SECT. 2. Said city shall within sixty days  
2 after taking any lands or buildings, as herein  
3 provided, otherwise than by purchase, for the  
4 purposes of this act, file and cause to be recorded  
5 in the registry of deeds for the county and dis-  
6 trict in which said land and buildings are situa-  
7 ted, a description thereof sufficiently accurate for  
8 identification, with a statement of the purpose  
9 for which the same was taken, which statement  
10 shall be signed by the mayor.

1     SECT. 3. So long as Fresh Pond shall be used  
2 by the city of Cambridge as a reservoir, storage-  
3 basin and water supply, or until otherwise pro-  
4 vided by statute, in order that the said city of Cam-  
5 bridge may better guard and protect the waters  
6 to be stored, distributed and used in said reservoir  
7 and storage-basin from pollution and intrusion, all  
8 the right and control which the Commonwealth  
9 has in the great pond known as Fresh Pond in  
10 Cambridge, is hereby granted and relinquished  
11 unto said city of Cambridge, the same to take  
12 effect whenever said city shall, by purchase or  
13 otherwise, become the owner of all the land  
14 abutting on said pond; and from this time hence-  
15 forward said city shall have exclusive right in  
16 and control over the said pond, and power to  
17 prevent all persons and animals from entering in,  
18 upon or over the land and waters thereof, except

19 that of preventing the two corporations before  
20 mentioned from cutting and removing ice, as pro-  
21 vided in section one of this act.

1   SECT. 4. Said city shall be liable to pay all  
2 damages sustained by any person or corporation  
3 by the taking of their land and other property  
4 for the purposes aforesaid. If anyone sustaining  
5 damage as aforesaid does not agree with said  
6 city upon the amount of said damage, he may,  
7 within two years from such taking, and not after-  
8 wards, apply by petition for an assessment of  
9 the damage to the superior court in the county  
10 in which the property taken or damaged is situ-  
11 ated. Such petition may be filed at any time  
12 within said two years in the office of the clerk of  
13 said court, who shall thereupon issue a summons  
14 to said city, returnable at the next return day  
15 after the expiration of fourteen days from the  
16 filing of the petition. The summons shall be  
17 served fourteen days at least before the day on  
18 which it is returnable by leaving a copy thereof,  
19 and of the petition, certified by the officer who  
20 served the same, with the clerk of said city, and  
21 the court may upon default or hearing of said city  
22 appoint three disinterested persons, who shall after  
23 reasonable notice to the parties assess the dam-  
24 ages, if any, which such petitioner may have  
25 sustained as aforesaid, and the award of the per-  
26 sons so appointed, or a major part of them, being  
27 returned into and accepted by the court, shall be  
28 final, and judgment shall be rendered and exe-

29 cution issued thereon for the prevailing party,  
30 with costs, unless one of the parties claims a trial  
31 by jury, as hereinafter provided.

1     SECT. 5. If either of the parties mentioned in  
2 the preceding section is dissatisfied with the  
3 amount of damage awarded as therein provided  
4 for, such party may, at the sitting of the court at  
5 which said award was accepted or the next sitting  
6 thereafter, claim in writing a trial in said court,  
7 and thereupon all questions of fact relating to  
8 such damages shall be heard and determined and  
9 the amount of damages assessed by a jury at the  
10 bar of said court, and the verdict of the jury  
11 being accepted and recorded by the court shall  
12 be final and conclusive, and judgment shall be  
13 rendered and execution issued thereon, and costs  
14 shall be recovered by the parties respectively in  
15 the same manner as is provided by law in regard  
16 to proceedings relating to laying out of highways.

1     SECT. 6. In every case of a petition to the  
2 superior court for an assessment of damages as  
3 provided in this act, the said city may tender to  
4 the petitioner or his attorney any sum, or may  
5 bring the same into court to be paid to the  
6 petitioner, for the damages by him sustained or  
7 claimed in his petition, or may in writing offer to  
8 be defaulted, and that damages may be awarded  
9 against it for the sum therein expressed; and if  
10 the petitioner does not accept the sum so offered  
11 or tendered, with his costs up to that time, but

12 proceeds with his suit, he shall be entitled to his  
13 costs to the time of such tender or payment into  
14 court or offer of judgment, and not afterwards,  
15 unless the amount recovered by him in such  
16 action exceeds the amount so tendered.

1     SECT. 7. All the rights, powers and authority  
2 given to the city of Cambridge by this act, shall  
3 be exercised by said city subject to all duties,  
4 liabilities and restrictions herein contained, in  
5 such manner and by such agents, officers and  
6 servants as the city council shall from time to  
7 time ordain, direct and appoint.

1     SECT. 8. For the purpose of paying for the  
2 land and settling the damages herein referred to,  
3 for improving the land by grading or otherwise,  
4 and generally for providing means for the further  
5 extension and improvement of the water works  
6 of said city from time to time, the city of Cam-  
7 bridge shall have authority to issue, in addition to  
8 what it is already authorized to issue by law, scrip  
9 or bonds, to be denominated on the face, "Cam-  
10 bridge Water Loan," to an amount not exceeding  
11 five hundred thousand dollars, bearing interest  
12 not exceeding six per centum per annum, payable  
13 semi-annually, the principal to be payable at  
14 periods not more than thirty years from the date  
15 of issue of such scrip or bonds. Said city may  
16 sell the same, or any part thereof, from time to  
17 to time, or pledge the same for money borrowed  
18 for the above purposes, but the same shall not be

19 sold or pledged for less than the par value  
20 thereof. All the provisions of chapter two hun-  
21 dred and fifty-six of the acts of eighteen hundred  
22 and eighty-four, and the acts alluded to therein  
23 in regard to the establishment and maintenance  
24 of a sinking fund for the redemption of the Cam-  
25 bridge water loan, shall apply to this act.

1     SECT. 9. This act shall take effect upon its  
2 passage.