

## HOUSE....No. 96.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, March 17, 1857.

The Committee on the Judiciary, to whom was recommended a Bill in relation to powers of County Commissioners in laying out Ways across Railroads, have considered the same, and report the Bill in a new draft.

For the Committee,

WM. H. WOOD.

Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Fifty-  
Seven.

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AN ACT

In relation to the Powers of County Commissioners in  
laying out Ways across Railroads.

*Be it enacted by the Senate and House of Representatives,  
in General Court assembled, and by the authority of the  
same, as follows:—*

1    SECT. 1. If, after the laying out and making of  
2 any railroad already granted, or which may be here-  
3 after granted, the public convenience shall require  
4 any turnpike road or other way to be so laid out as to  
5 cross said railroad, the said turnpike road or other way  
6 may be so laid out and established across said railroad  
7 whenever the county commissioners of the county in  
8 which such crossing is situated shall so authorize and  
9 direct.

1   SECT. 2. The said commissioners, before laying out  
2 any way across a railroad, shall cause due notice to  
3 be given to the corporation to which said railroad  
4 belongs, that they may be heard in the premises; and  
5 after hearing said corporation, and any other parties  
6 interested who may wish to be heard, they may lay  
7 out a way across said railroad, but they shall require  
8 said way to be so constructed as to pass under or over  
9 the same, and not upon the same level therewith,  
10 except in cases hereinafter provided for; and said way  
11 shall, in all cases, be so made as not to obstruct  
12 or injure such railroad.

1   SECT. 3. The selectmen of any town, or the mayor  
2 and aldermen of any city, before laying out any way  
3 across a railroad, shall make application to the county  
4 commissioners of the county in which said town or  
5 city is situated, for permission so to do; and the said  
6 commissioners shall cause due notice of such applica-  
7 tion to be given to the corporation to which such  
8 railroad belongs; and after hearing said corporation,  
9 and any other parties interested who may wish to be  
10 heard, may authorize the said selectmen, or mayor and  
11 aldermen, to lay out a way across said railroad, and  
12 shall require said way to be so made as to pass under  
13 or over the said railroad, and not at the same level  
14 therewith, except in cases for which provision is  
15 hereinafter made; and they shall in all cases require  
16 said way to be so made as not to obstruct or injure  
17 said railroad.

1   SECT. 4. The county commissioners shall, in their  
2 adjudication, determine whether the way shall be so

3 constructed as to pass under the railroad, or over  
4 the same, and if the way shall pass over the railroad,  
5 they shall determine and specify in what manner the  
6 bridge necessary for such crossing shall be constructed,  
7 so as not to interfere with the travel upon said rail-  
8 road; and all the expenses arising from, and incident  
9 to the construction and maintaining of the way across  
10 said railroad, shall, in all cases, be borne by the  
11 county, city, town or corporation, whose duty it is to  
12 build and maintain such way.

1     SECT. 5. Whenever, in the opinion of the county  
2 commissioners, there may exist a public necessity that  
3 a highway or town way shall be laid out and con-  
4 structed across any railroad, at the same level there-  
5 with, they may so lay out a highway, and may autho-  
6 rize the selectmen of any town, or the mayor and  
7 aldermen of any city, so to lay out and construct a  
8 town way: *provided*, that whenever the said commis-  
9 sioners have required any highway, or authorized any  
10 town way to be so made as to cross any railroad at  
11 the same level therewith, the corporation owning the  
12 railroad so crossed, or the selectmen of the town, or  
13 the mayor and aldermen of the city in which such  
14 crossing is situated, or any person interested, may  
15 appeal from their adjudication to the supreme judicial  
16 court, then next to be held for the county in which  
17 the adjudication is made, whose decision in the prem-  
18 ises shall be final.

1     SECT. 6. Any railroad corporation whose road  
2 shall be crossed by any turnpike or other way, as  
3 herein before provided, shall, in all cases where the



4 said turnpike or way crosses said railroad on a level  
5 therewith, at their own expense, so guard or protect  
6 their rails by plank, timbers, or otherwise, as to secure  
7 a safe and easy passage across their railroad; and all  
8 other expenditures which the county commissioners  
9 may require to be made by the railroad company, and  
10 arising from, or incident to, the laying out, making,  
11 or maintaining such turnpike or way, shall be borne  
12 by the corporation owning such turnpike, or by the  
13 city, town, or county whose duty it is to support such  
14 way; and if, in the opinion of the county commis-  
15 sioners, any subsequent alteration of said turnpike or  
16 other way, or any additional safeguards shall be  
17 required at the crossing thereof, the county commis-  
18 sioners may order the railroad company to establish  
19 the same as provided in the three hundred and fiftieth  
20 chapter of the acts and resolves of one thousand  
21 eight hundred and fifty-five; and the expense arising  
22 therefrom shall be borne by the corporation owning  
23 such turnpike, or the city, town, or county whose duty  
24 it is to support such way, and the said commissioners  
25 shall have the same powers to compel any town or  
26 city to pay the expenses in this section specified, as  
27 now are given them in the forty-fourth and forty-fifth  
28 sections of the twenty-fourth chapter of the Revised  
29 Statutes, in relation to the construction of highways.

1     SECT. 7. The second section of the two hundred  
2 and seventy-first chapter of the acts of the year one  
3 thousand eight hundred and forty-six, is hereby  
4 repealed.

1. The first part of the report is a general statement of the facts of the case, and a statement of the law applicable to the facts.

2. The second part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

3. The third part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

4. The fourth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

5. The fifth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

6. The sixth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

7. The seventh part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

8. The eighth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

9. The ninth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.

10. The tenth part of the report is a statement of the facts of the case, and a statement of the law applicable to the facts.